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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968.

No. 1267

NEWSPAPER DRIVERS & HANDLERS LOCAL UNION NO. 372, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, IND.,
Petitioner,

v.

DETROIT NEWSPAPER PUBLISHERS ASSOCIATION, THE EVENING NEWS ASSOCIATION, Owner and Publisher of the Detroit News, KNIGHT NEWSPAPERS, INC., Owner and Publisher of the Detroit Free Press,

and

NATIONAL LABOR RELATIONS BOARD,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

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NEWSPAPER DRIVERS & HANDLERS LOCAL UNION NO. 372, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, IND.,
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and

NATIONAL LABOR RELATIONS BOARD,
Respondents.

MOTION TO USE RECORD CERTIFIED TO THIS COURT IN NEWSPAPER AND HANDLERS LOCAL UNION 372 v. NLRB, 382 U. S. 374, CASE NO. 663, OCTOBER TERM, 1965.

This Petitioner filed a Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this case on June 3, 1965. At that time, the record in that case was certified to this Court, where it has remained. Petitioner now moves that the record already certified to this Court be used as part of the record in the instant case.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in this case on December 31, 1968.

CITATIONS TO OPINIONS BELOW.

The Supplemental Decision and Order of the National Labor Relations Board are unreported and are printed in Appendix B, *infra,* pp. 9-21 of this Petition. The original Decision and Order of the National Labor Relations Board is reported at 145 NLRB 496 (R. I. 93a-104a)[1] and is printed in Appendix G, *infra,* pp. 33-98 of this Petition. The opinion of the court below is reported at 404 F. 2d 1159 and is printed in Appendix A, *infra,* pp. 1-8 of this petition. The original decision of the Court below is reported at 346 F. 2d 527 and is printed in Appendix F, *infra,* pp. 25-32 of this Petition. The decision of this Court granting the Petition for Writ of Certiorari vacating the earlier judgment of the court below, and directing remand of the case to the National Labor Relations Board is reported at 382 U. S. 374 and is printed in Appendix E, *infra,* p. 24.

JURISDICTION.

The opinion of the court below was entered on December 31, 1968. The final order of the court below, entered on December 31, 1968, appears in Appendix C, *infra,* p. . . . On August 18, 1965, Justice Potter Stewart extended, until April 15, 1969, the time for filing this petition. This order

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[1] "I" refers to the volume of the printed record in the Court below. "93a-104a" refers to the relevant pages of that volume.

extending time appears in Appendix D, *infra*, p. 23. The jurisdiction of this court is invoked under 28 U. S. C., Section 1254 (1).

QUESTIONS INVOLVED.

1. Whether an employer violates Section 8 (a) (1) or (3) of the Act by locking out its employees prior to an impasse in bargaining?

2. Whether an employer violates Section 8 (a) (1) or (3) when it locks out its employees to bring pressure upon employees of another employer who are on strike, where the two employers are not members of a multi-employer bargaining unit?

STATUTES INVOLVED.

The statutory provisions involved are Sections 7, 8 (a) (1), 8 (a) (3), 13, and 203 (c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U. S. C., Sec. 151 et seq., referred to as the "Act"). They are printed in Appendix H, *infra*, pp. 99-100.

STATEMENT.

Petitioner, Newspaper Drivers and Handlers Local Union No. 372, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Local 372), is a labor organization and represents, in separate bargaining units, certain of the employees of two independent firms engaged in the newspaper business in Detroit, Michigan. In addition to the National Labor Relations Board (Board), there are three Respondents: The Evening News Association, which publishes The Detroit News (News), a daily newspaper, and Knight Newspapers, Inc., which publishes The Detroit Free Press (Free Press), a competing newspaper, and the Detroit

Newspaper Publishers Association (Association), which handles some labor relations problems for the News and the Free Press, both of whom are members of the Association.[2]

As the court below noted in its original opinion "the evidence relating to the question presented here is undisputed . . ." (App. F, *infra*, p. 26). The operative facts are these: For more than twenty years Local 372 has negotiated separate collective bargaining agreements with the Free Press and the News (R. I. 71a-72a). These agreements were not identical; on the contrary, some of their provisions differ markedly, although there are also similarities because the employees of these separate employers perform similar work. The employees of each paper vote separately to accept or reject their own employer's offer or to ratify an agreement negotiated by the officers of Local 372 (R. I. 72a). As in past years, separate negotiations were initiated in October 1961, when Local 372 notified the Free Press and the News of its desire to revise the separate contracts with the Free Press and the News.

Negotiations with the Free Press commenced in October 1961, and, after numerous negotiating meetings, resulted in an impasse on April 11, 1962 (R. I. 50a-51a; R. V. 995a). The "last best offer" of the Free Press was presented to Local 372 on that day and rejected by the Free Press employees. The Free Press employees also voted to strike, and the strike commenced on April 11, 1962 (R. I. 51a). The employees of the News did not participate in these votes.

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[2] After establishment of the Association in 1945, its executive secretary was usually present at the bargaining sessions between each of the two papers and Local 372, but the actual negotiations on behalf of each of the papers involved were conducted by officials of that paper (R. I. 71a). On a few occasions, officials of the "other" paper appeared, identifying themselves as "observers". When Local 372 protested their appearance in September 1958, the "observers" withdrew, and there was no recurrence (R. I. 71a).

Although Local 372 was able to strike the Free Press, its agreement with the News prohibited strike action in connection with negotiations and provided that all unresolved issues between the parties should be submitted to arbitration (Volume V, Resp. Ex. 12, Sec. 3, p. 1069a at pp. 1071a-1072a).

Separate negotiations were conducted between Local 372 and the News. Some thirteen meetings were held from the latter part of October 1961, and early January 1962 (R. V. 998a). At a negotiating meeting held on March 22, 1962, Local 372 agreed to submit revised proposals to the News. These proposals were received by the News on April 12, the day *after* the strike at the Free Press had commenced (R. I. 51a).

A secret meeting was held between officials of the News and the Free Press on April 9 and 10. This meeting was held prior to the News receiving Local 372's revised proposals and prior to the strike by the employees of the Free Press. During the meeting, the News indicated an interest in about ten of the eighteen issues then pending between Local 372 and the Free Press. With respect to three of these issues which the News considered vital in its bargaining (i. e., change in operations clause, work-week clause, and wages), it urged the Free Press to remain adamant and offered to support the Free Press on these issues. It was agreed between the News and the Free Press that if the employees of the Free Press struck over any of these issues the News "would not publish" (R. I. 50a-51a). The News and Free Press further agreed that "the Union would not be informed that a strike against one is a strike against both or what the position of the News would be in case of a strike at the Free Press" (R. V. 1140a).

Implementing its agreement with the Free Press, the News suspended publication on April 12, the day after

the strike began against the Free Press.. Although the News did not publish a newspaper on April 12, 13 or 14, its employees reported to work and were paid for those days. Under date line of Sunday, April 15, the News published an edition captioned, "The Detroit News—The Detroit Free Press. A Temporarily Combined Edition" which was distributed to News and Free Press subscribers by the News distribution employees who were represented by Local 372.[3] When work on this special edition was completed on April 15, the News locked out its employees, advising them that they should not report until further notice and that "there was no work available" (R. I. 51a-52a).

Negotiating meetings between Local 372 and the Free Press were held on April 13 and 14. A separate meeting with the News was held on April 14. Negotiations were recessed until April 18. On April 18 and 19, negotiations resumed and, with the assistance of a mediator, an agreement was reached between Local 372 and the Free Press. Local 372 was unable to settle its differences with the News, but Local 372 and the News did agree to submit all unresolved issues to arbitration. On April 19, Local 372 terminated its strike against the Free Press and the News ended its lockout.

Based upon unfair labor practice charges filed by Local 372, and similar charges filed by other labor organizations, an unfair labor practice complaint alleging violations of Sections 8 (a) (1) and (3) of the Act was issued against the News, the Free Press, and the Association. The Board, in its original decision (App. G; *infra,* pp. 33-34), affirming the Trial Examiner, held that the lockout by the News

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[3] Local officers advised News drivers to cross the picket line at the Free Press to pick up some inserts which were part of the combined edition, and also to deliver the combined edition to Free Press as well as News distribution points as instructed (R. I. 52a; II. 274a).

from April 16 to April 19 was used as an "offensive weapon" and violated the Act (R. I. 97a, 99a-100a). In reaching this conclusion, the Board specifically noted that the employers "concededly did not bargain with [Local 372] in a joint or multiemployer unit as that term has traditionally been employed by the Board and the Courts" (R. I. 100a). Although the News' lockout, which the Board found to be unlawful, was undertaken pursuant to an express agreement between the News, the Free Press, and the Association, the Board rejected the Trial Examiner's recommendation that the Free Press and the Association, as well as the News, be held liable for the lockout.

Following the entry of the Board's order, the News, Free Press, and Association petitioned the court below to set aside the Board's order. The Board requested enforcement. Local 372 also petitioned the court below to impose, as the Trial Examiner had, joint and several liability upon the News, the Free Press, and the Association and supported the Board's request for enforcement. The various petitions were consolidated.

Relying primarily upon *American Ship Building Co. v. Labor Board,* 380 U. S. 300, the court below denied enforcement of the Board's order:

> "While in *American Ship Building* there was an impasse in the negotiations between the employer and the union, we do not think the teaching of that case merely adds another exception to the Board's category of permissible lockouts" (App. F, *infra,* p. 29).

Local 372 filed a petition for certiorari; the Board did not oppose this petition but suggested, as did Local 372 (Pet. 12—Case No. 663, October Term, 1965), that the original decision of the court below be vacated and the case remanded to the Board for reconsideration in light of *American Ship Building Company v. NLRB,* 380 U. S. 300

and *United Mine Workers v. Pennington,* 381 U. S. 657 (Bd. Memorandum, pp. 4-7). This Court then directed "the case be remanded to the National Labor Relations Board for further consideration in light of *American Ship Building Co.* . . ." (App. E; p. 24).

In the original proceeding all parties apparently took the position that there was no impasse between Local 372 and the News. In answer to specific questions in the Board hearing, James T. Dorris, an experienced negotiator for the News, stated, with apparent candor, that he was familiar with "the term impasse" but specifically denied that "there was an impasse between the Detroit News and the Teamsters after December of 1961" (R. IV. 628a-630a, 676a-677a). Before the Board the News originally argued that its lockout was legal because it had a right to preserve a de facto multi-employer unit (App. G, pp. 24-40). As the above quotation shows, the court below had originally concluded that there was no impasse but this fact did not make the News lockout illegal. And the Board, in supporting Local 372's Petition for Certiorari in Case No. 663, October Term, 1965, specifically represented to this Court that the News locked out before there was an impasse:

> "[T]he News locked out before an impasse had been reached in its negotiations with the Union, and did so in support of the bargaining position of Free Press, which was in a separate unit." (Bd. Memorandum, Case No. 663, October Term, 1965, p. 5, fn. 4. See, also, pp. 4-7).

On remand, however, a majority of the Board, apparently discounting the News' denial that there was an impasse, found there was a "deadlock" (App. B, pp. 16-17).[4]

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[4] Board member Brown dissented on the ground that there was no impasse (App. B; pp. 19-21).

It also concluded that the lockout of the News in support of the Free Press was not " 'inherently so prejudicial to union and so devoid of significant economic justification' " that there could be an unfair labor practice in the absence of union animus (App. B, p. 15). The Court below interpreted "deadlock" to mean "impasse", and then sustained the Board's finding of "impasse"; it also upheld the Board's conclusion that proof of union animus was necessary because of the News' "own direct and economic interest in the outcome of the [Free Press] negotiations" (App. A, pp. 2-3). Local 372 shall proceed here, as it has consistently throughout this protracted litigation, on the basis that there was no impasse between the News and Local 372. The substantive changes in the law which have occurred since this case began cannot alter the facts in the record or their meaning.[5]

REASONS FOR GRANTING THE WRIT.

The critical facts are undisputed and they show: Local 372 bargains separately with the News and the Free Press. The News locked out its employees prior to any impasse in its bargaining with Local 372. The lockout by the News was implemented pursuant to an agreement with the Free Press and was for the purpose of supporting the Free Press in its separate negotiations with Local 372.

Given these facts, it is clear that both the Court below and the Board have extended the holding and rationale of *American Ship Building* to permit lockouts except

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[5] The Court of Appeals for the District of Columbia Circuit has suggested that the Board should judge employers' actions "by reference to the motivation upon which they *acted* rather than one upon which they *might* have acted:" *Western States Regional Council v. NLRB*, 365 F. 2d 934 (D. C. Cir. 1966—italics in original), remanding 155 NLRB 931; on remand, the Board, reaffirmed its original decision, 166 NLRB No. 7, affirmed 398 F. 2d 770 (D. C. Cir. 1968).

where it is shown that the employer does not have a direct economic interest in locking out his employees or that he acts on the basis of union animus.

As the Board recognized, the holding in *American Ship Building* does not require the conclusion that the News lockout in support of the Free Press' bargaining position is lawful. It recognized that the majority opinion in *American Ship Building* very carefully limited its holding to "the use of a temporary layoff of employees solely as a means to bring economic pressure to bear in support of the employer's bargaining position after an impasse had been reached. This is the only issue before us and all that we decide." (380 U. S. at 308, App. B; p. 15).

The Board based its conclusion not on the holding of *American Ship Building,* but on its belief that this Court's rationale required the conclusion that a lockout is unlawful only if it "is inherently so prejudicial to union interest and so devoid of significant economic justification". (*Ibid.* at 311, quoted and discussed by the Board, App. B; p. 15). When the Board invoked this language as its approach to the question whether a lockout is unlawful, it relied on language which was specifically restricted to questions arising under Section 8(a)(3), and ignored the problems under Section 8(a)(1), where proof of union animus is rarely necessary. See, e.g., *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21. Moreover, the context in which this statement occurs demonstrates that it was addressed only to the post impasse lockout then before this Court. 380 U.S. at 311-312.

Unlike this Court in *American Ship Building,*[6] the Board and the Court below neglected to analyze the interests at stake—the interests of the employer, the union, the employes, and the public—in light of the policies of

[6] See, esp., 380 U. S. at 307-311.

the Act to determine when an employer may lawfully use the most potent economic weapon in his arsenal—his power to deprive his employees of work and income. Even the brief analysis undertaken here shows what profound impact the decision below will have on the relative bargaining power of employers and unions, on the respective rights of employers and employees, and on the interests of the public. We first consider the pre-impasse lockout, and then the lockout designed, at least in part, to strengthen the bargaining position of another employer in a different bargaining unit.

I. The Pre-Impasse Lockout.

The difference in impact upon the employer and his employees resulting from a pre-impasse lockout and a post impasse lockout is clear. Before an impasse is reached, an employer cannot know whether economic pressure is necessary to resolve the dispute. Before an impasse, the question is not when, but whether, there will be a work stoppage. In such a situation, an employer's interest in initiating economic warfare is obviously more attenuated than in situations when the negotiating process has produced, not agreement, but an impasse which will require "economic pressure to break". *American Ship Building Co. v. NLRB,* 380 U. S. 300, 306.

Although the employer's need for a lockout is less before than after impasse, the impact of pre-impasse lockout on employees' rights is greater. First, a pre-impasse lockout subjects employees to loss of pay which is otherwise much less likely to occur than in the post impasse situation. Second, a pre-impasse lockout subjects them to economic losses prior to the time they have committed themselves to take an adamant position on certain demands. Third, and most important, permitting lockouts prior to impasse means that employees may never know when the decision to exercise their right will subject

them to serious economic losses. It is one thing to hold, as this Court did in *American Ship Building,* that the right to bargain collectively "does not entail any right to insist on one's position free from economic disadvantage" and another to say that the mere exercise of the right to bargain collectively—that is, to present bargaining proposals and to negotiate them with one's employer —may subject one to economic disadvantage.

Obviously, then, the question of an employer's right to lockout its employees prior to impasse raises serious issues of national labor policy which this Court should resolve.

II. The Lockout to Strengthen Another Employer's Bargaining Position.

The impact of a lockout by one employer to strengthen the bargaining position of another can perhaps best be seen by an analysis of the impact that the News lockout had upon the rights of its employees, that it had upon the rights of Free Press employees, and that it had upon the interests of the public.

A. **The News Employees.**

The News employees, who were locked out after employees of the Free Press struck in support of certain bargaining demands, did not vote on these demands, did not vote on the decision to strike in support of them, and did not vote on the decision to end the strike. And since the News employees were not in the same bargaining unit as the Free Press employees, the Free Press' acceptance of its employees' demands would not bind the News, for the News did not agree to be bound by such agreement.

Thus, the control over the collective bargaining with the Free Press, including the control over the strike weapon, lay in the hands of the Free Press employees. In placing this control in these hands, Local 372 acted in a

manner approved by Congress. Section 203 (c) of the National Labor Relations Act specifically refers to the "submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in secret ballot" as an appropriate method of handling labor disputes..

Under the decision below, then, the News employees, although they had no control over what demands that the Free Press employees will insist upon to the point of impasse or over their decision to strike, are, as long as they remain represented by Local 372, subject to being locked out whenever the Free Press employees decide to strike their employer.[7] Only by repudiating Local 372 as their bargaining representative can employees in the News' unit avoid the possibility or likelihood of such losses.

The decision below then confers upon the employers who have a "direct" economic interest in labor disputes of their competitors the power to subject their own employees to substantial economic harm simply because they choose to be represented by the same union that represents their competitor's employees. Such power, of course, directly conflicts with the policy of the Act "to insulate employees' jobs from their organizational rights." *Radio Officers Union v. NLRB*, 347 US 17, 40.

Conferring such power on competing employers is not warranted by *NLRB v. Brown*, 380 US 278. There the employees who were locked out and then temporarily replaced were, by working, furthering "the objective of the whipsaw strike to break through the employers united front . . ." and, they stood, as employees in the same bargaining unit as the striking employees, " 'to gain benefits that [would] ultimately accure to all employees in the associationwide unit' " *Ibid.* at 285.

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[7] This statement is based on the realistic assumption that there will invariably be some overlap between bargaining demands of employees of the News and the Free Press.

Like the employers in *Brown,* the News was willing to lock out its employees to influence the negotiations of a competing employer who was struck. Unlike the employer in *Brown,* however, the News did not participate in or agree to be bound by such negotiations.[8] It thus sought to gain the benefits of multiemployer bargaining without accepting its liabilities and to achieve these benefits without the agreement of Local 372.

B. **The Free Press Employees.**

The impact of the News' lockout upon the Free Press employees differs significantly from the lockout's impact on the employees in *American Ship Building Company v. NLRB,* 380 U. S. 300. Because *American Ship Building's* lockout simply deprived the union and the employees of control over the timing and duration of the strike against the employer, it did not cause the employees economic losses different from those which they would have suffered had they struck. While employees normally expect that insistence to impasse upon their bargaining demands may lead to a work stoppage and result in short-run economic losses, which is what happened in *American Ship Building,* they accept this price willingly because they hope to reap long-term economic advantages by such insistence and work stoppages.

Unlike the situation in *American Ship Building,* however, the News' lockout did not cause the employees in the Free Press unit any economic loss; they were already on strike. The economic losses that resulted from the lockout were suffered, not by them, but by the employees outside the bargaining unit who were not parties to the dispute with the Free Press. The News' lockout thus put pressure on employees in the Free Press unit to give up their strike.

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[8] This Court recently upheld the Board's power to compel a recalcitrant employer in a multi-employer unit to abide by the contract negotiated for the unit. *NLRB v. Strong,* ... U. S. ..., 21 L. Ed. (2d) 546.

and their bargaining position, not because it caused them economic harm, but because it imposed economic harm upon their fellow unionists who, even if the strike proved successful, were not entitled to share the long-run benefits that they hoped to win.

The pressures generated by the News' lockout on the Free Press employees, then, were not like those generated by the lockout of *American Ship Building Co.*; they were more like those generated by the type of agreement before this Court in *United Mine Workers v. Pennington,* 381 U. S. 657, where the union contracted with "one group of employers to impose a certain wage scale on other bargaining units." 381 U. S. at 665.

This Court stated about such an agreement:

> "[T]here is nothing in the labor policy indicating that the union and the employers in one bargaining unit are free to bargain about the wages, hours and working conditions of other bargaining units or to attempt to settle these matters for the entire industry. On the contrary. The duty to bargain unit by unit leads to a quite different conclusion. The union's obligation to its members would seem best served if the union retained the ability to respond to each bargaining situation as the individual circumstances might warrant, without being strait-jacketed by some prior agreement with the favored employers." 381 U. S. at 666.

Pennington, then, established the principle that it is contrary to national labor policy for employers in one bargaining unit to bring pressure on unions to alter their bargaining positions *vis-a-vis* employers in other bargaining units. In *Pennington,* the pressure on the union's bargaining position was generated by the outside employers' collective agreement with the union; here the pressure on the union's bargaining position was generated by

the News lockout, for the lockout prevented Local 372 from responding to the "bargaining situation" at the Free Press as "the individual circumstances" of the employees of the Free Press warranted. The effect of the lockout, like the effect of the *Pennington* agreement on the United Mine Workers, was "to limit the free exercise of the employees' right to engage in concerted activities according to their own views of their self-interest"[9] because the News lockout compelled both Local 372 and employees in the Free Press unit to consider not only the self-interest of the Free Press employees and their bargaining strength *vis-a-vis* Free Press, but also the cost of the lockout to employees in the separate News unit.

The approach in *Pennington,* where employers were denied the right to put pressure on unions to influence the results of collective bargaining disputes outside their own bargaining units, is a necessary corollary of Congress's dual objectives, which, on one hand, favor multi-employer bargaining units under the safeguards established by the Board, and, on the other, seek to confine labor disputes to the primary disputants. Compare: *NLRB v. Truck Drivers Union* (*Buffalo Linen*), 353 US 87 with *Local 1976, Brotherhood of Carpenters v. NLRB;* 357 US 93, 106. While the existence of multi-employer units may, in certain instances, broaden the conflict beyond the confines of a single employer, as *Buffalo Linen* and *Brown* show, multi-employer units generally further the "the national labor policy of promoting industrial peace through effective collective bargaining". 353 US at 95. And, because multi-employer bargaining results from voluntary agreement, the limits of industrial conflict take place within a framework set by the parties.

In place of the framework voluntarily established by employers and unions with Congressional approval, the

[9] 381 U. S. at 667.

Board's lockout decisions have substituted a "direct-remote economic interest" test. Under this test, the legality of an employer's lockout in support of a competing employer's bargaining position will turn, in the absence of union animus, upon whether the Board finds that the employer's economic interest in the bargaining dispute is direct or remote. Compare the instant case with *David Friedland Painting Co., Inc.*, 158 NLRB 671, enf'd. 377 F. 2d 938 (3rd Cir. 1967). Since, in the absence of union animus, the employer's decision to lock out is necessarily based on his business judgment that his economic interests are directly affected by the bargaining dispute in the other unit, this test requires the Board to substitute its *business* judgment for the employer's when it holds, as it did in *David Friedland Painting Co.* that the employer's interest in the labor dispute is too remote. Such an approach not only confers enormous discretion on the Board, but also permits employers to disregard bargaining units in deciding when to use economic pressures to aid their competitors defeat strikes.

The implications of this change should be fully explored by this Court before it becomes part of national labor policy. Certainly nothing in *American Ship Building* requires such a shift in the dynamics of established bargaining relationships.

C. **The Public.**

The immediate effect of the lockout was to frustrate Congressional hope to contain "the scope of industrial conflict and [limit] the economic effects of the primary dispute. . . ." *Local 1976 Carpenters v. NLRB*, 357 U. S. 93, 106. The problem in *Local 1976* was union pressure on employers whose interests may have been affected by the outcome of a particular labor dispute but who are not parties to that dispute. Here, the problem is employer pressure on union members whose interests may have

been affected by the outcome of a particular labor dispute between the Free Press and its employees but who were not parties to that dispute.

It is clear—and apparently undisputed—that the News' employees could not have struck the News to support the bargaining position of the Free Press employees without engaging in prohibited secondary activity. That employers may lock out employees in situations where Congress has immunized them from strikes and for purposes for which unions may not strike, at a minimum, raises important questions of statutory interpretation which this Court should resolve. Lurking behind these questions are far reaching implications not only for collective bargaining, but also for the national economy. Under the decision below, for example, large automobile manufacturers, simply because they have a direct economic interest in the outcome of the negotiations of a competing automobile manufacturer whose employees are on strike may lock out their own employees to bring economic pressure upon those striking and, thereby, transform a single employer dispute into an industry-wide one.

* * * * * * * *

Finally, the decision below has a profound effect upon the relative bargaining powers of employees and employers. Because the lockout, like the strike, is such a powerful economic weapon, the consequences of allowing its use should be carefully considered. As this Court said of the lockout question posed in *Buffalo Linen,* "the ultimate problem is the balancing of legitimate interests." 353 U. S. at 96. *American Ship Building* cannot be viewed as a departure from this principle; for this Court in *Brown,* 380 U. S. 278, a companion case to *American Ship Building,* expressly reaffirmed its holding in *Buffalo Linen,* 380 U. S. at 285.

There can be no question that the decision below greatly augments the power of employers to further their

interests in collective bargaining disputes. Whether this is consistent with, or will upset, the balance Congress struck, "between the uncontrolled power of management and labor to further their own interests"[10] is a question which this Court should resolve. That the Board attempted to deal with such a crucial question by purporting to rely on certain language of this Court's decision in *American Ship Building* should not obscure the effect its decision has upon the interests of employees, employers, and the public.

CONCLUSION.

For the reasons stated, this petition should be granted.

Respectfully submitted,

DAVID PREVIANT,

DAVID L. UELMEN,
211 West Wisconsin Avenue,
Milwaukee, Wisconsin 53203,
Counsel for Petitioner.

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[10] *Local 1976, Brotherhood of Carpenters v. NLRB*, 357 US at 100.

APPENDIX "A".

No. 18,179.

UNITED STATES COURT OF APPEALS
For the Sixth Circuit.

(Caption Omitted.)

Decided December 31, 1968.

Before: Weick, Chief Judge, McCree and Coffin,* Circuit Judges.

Weick, Chief Judge. This case is before us on the petition of Newspaper Drivers & Handlers' Local No. 372, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Ind.) (Teamsters), to review an order of National Labor Relations Board issued on June 29, 1967 (166 NLRB No. 6). This is the second occasion on which the case has been before us for review.

On January 15, 1964 the Board issued a decision and order (145 NLRB 996) finding that The Evening News Association, owner and publisher of the Detroit News, violated Sections 8(a)(1) and (3) of the National Labor Relations Act, 29 U. S. C. §§ 158(a)(1) and (3), by locking out its employees from April 16 to April 19, 1962. While the case was pending before this Court, the Supreme Court rendered its decision in *American Ship Bldg. Co.* v. *NLRB,* 380 U. S. 300 (1965). The Court held that a lockout of employees after an impasse in bargaining had been

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* Honorable Frank M. Coffin, Judge, United States Court of Appeals for the First Circuit, sitting by designation.

reached, for the sole purpose of bringing economic pressure to bear in support of an employer's bargaining position, is not a violation of Section 8(a)(1) or (3) of the Act. The Board then moved this Court to remand for reconsideration in the light of *American Ship*. We denied the motion to remand and denied enforcement of the Board's decision and order. *Detroit Newspaper Publishers Ass'n* v. *NLRB*, 346 F. 2d 527 (6th Cir. 1965). The Supreme Court vacated the judgment of this Court and directed that the case be remanded to the Board for further consideration in light of *American Ship. Newspaper Drivers Local 372* v. *Detroit Newspaper Publishers Ass'n*, 382 U. S. 374 (1966).

Upon remand, the Board reconsidered the case upon the original record and found that the Detroit News (News) did not violate Sections 8(a)(1) and (3) of the Act by locking out its employees. The facts are stated in our first opinion and need not be repeated here except for emphasis.

Teamsters contends that the Board did not find that an impasse in bargaining had been reached, and hence the lockout was unlawful. This is incorrect. In its Supplemental Decision and Order the Board did make a specific finding that "both parties viewed their negotiations as being *deadlocked* on key issues, and that neither doubted that a work stoppage would be required to break the *deadlock*" (Italics ours). The words "deadlock" and "impasse" are synonymous.

In Webster's New World Dictionary of the American Language, impasse is defined as "a situation from which there is no escape; difficulty without solution; deadlock."

The words were used interchangeably by the Court in *Dallas Gen. Drivers Local 745* v. *NLRB*, 355 F. 2d 842, 845 (D. C. Cir. 1966).

The finding of the Board that an impasse or deadlock existed is supported by substantial evidence. Teamster president Hoffa stated prior to the meeting with the News on April 14th:

> "The News had better be present . . . because the issues at the News would have to be settled or they'd be on strike also."

After the meeting, Hoffa told News negotiator Dorris that he considered the News' offer to be its "last proposal" and its "final best offer." No further meetings were held between the News and the Teamsters after April 14th until a third party, Detroit Police Commissioner Edwards, now a judge of this court, was called in to mediate the dispute.

Thus, over identical issues, Teamsters had struck the Free Press and threatened the News with a strike unless it acceded to the union's demands. The parties were unable to resolve their disputes and had to call upon an experienced mediator for assistance. This is the clearest kind of evidence of an impasse. In our opinion, the lockout was within the holding of *American Ship*.

We should point out, however, that the Board held in *Darling & Co.*, 171 NLRB No. 95 (1968), that a pre-impasse lockout, under the circumstances of that case, was not violative of Sections 8(a)(1) and (3) of the Act. We do not understand that the Supreme Court in *American Ship* foreclosed consideration of factors other than impasse in determining the legality of a lockout.

The premise underlying the Teamsters' remaining argument is that, in locking out its employees, the News was not pursuing its own economic interests, but was primarily seeking to support the bargaining position of the Free Press. Teamsters argues that because this purpose is too remote to constitute a legitimate bargaining position, the lockout is unlawful under the reasoning of *American Ship*.

This attempt to characterize the News' economic interests as "remote" is based upon Teamsters' stress on the literal absence of a formal multi-employer unit.[1]

Teamsters contends that in the absence of such a unit, an employer cannot be said to have any legitimate interest in supporting, by a lockout, another employer's bargaining position. These arguments attack the motivation of the News in locking out its employees. Whatever may be said of the validity of this contention in other circumstances, it is clear that it has no meaningful relationship to the industrial realities involved here, and is unsupported by the facts of this case.

Obviously, the News' lockout had the effect of supporting the bargaining position of the Free Press. The facts of this case, however, make it clear that the News' utilization of economic pressure was not motivated by a concern for the bargaining position of its competitor, the Free Press, but by its own direct and immediate economic interest in the outcome of the negotiations. The News, as well as the Free Press, had been negotiating with the Teamsters for an extended period of time and was faced with the same bargaining demands by the Union. The Teamsters struck the Free Press over some issues which the News considered vital to it.

By locking out its employees, the News sought to advance its own immediate bargaining position by supporting the struck employer in its attempt to withstand the union's demands on the vital issues. Clearly, concessions granted by the struck employer could be expected to have an adverse effect on the News' ability to adhere to its own position. Thus, while an effect of the lockout was to aid

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[1] In the initial proceeding before the Board, the News attempted to defend on the ground that this case was governed by *NLRB v. Truck Drivers' Local 449* (*Buffalo Linen*), 353 U.S. 87 (1957). This defense was rejected by the Board.

the Free Press, the interest of the News in using economic pressure was grounded upon a very real, direct, and immediate bargaining motivation to advance its own cause. As aptly stated in *American Ship*:

> "There was not the slightest evidence and there was no finding that the employer was actuated by a desire to discourage membership in the union as distinguished from a desire to affect the outcome of the particular negotiations in which it was involved." *American Ship Bldg. Co.* v. *NLRB, supra,* at 313.[2]

Teamsters argues that the loss in wages caused by the lockout had a deterring effect on the employees' desire to remain as members of the union. It must be assumed that in authorizing a strike or in making demands to which the employer is not willing to accede, the employees considered the risk involved and were willing to take it. If the lockout is lawful, the loss of wages resulting therefrom,[3] as well as from a strike, must be borne by the employees or by

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[2] This discussion is also relevant to the Teamsters' apparent argument, not discussed by the Board and we assume not raised below, that the lockout violated Sections 8(a)(5) and (1) of the Act because it was in support of a secret agreement to alter the established bargaining structure and was violative of the statutory requirement to bargain in good faith.

As already noted, the purpose of the lockout was to advance the News' own bargaining position and this was also the purpose of the News' agreement with the Free Press since that agreement concerned only the three issues that the News considered vital to its position. There was no attempt here to obtain the benefits of a multi-employer bargaining unit since the agreement concerned only a few of several issues and since neither employer agreed to be bound by the negotiations of the other. Thus, the News was acting independently for its own benefit and was not attempting to establish a multi-employer bargaining unit.

Nor was there any showing of antiunion animus or bad faith in the sense of a refusal to negotiate with the union over any of the issues involved, nor was such a refusal alleged. See *Kroger Co. v. NLRB,* ... F.2d ... (Nos. 17,895, 18,011, 6th Cir. Oct. 10, 1968).

[3] In the case at bar, five days' wages.

the union. To hold otherwise would be inconsistent with the holding of the Supreme Court in *American Ship*.

Teamsters' reliance on *David Friedland Painting Co.*, 158 NLRB 571 (1966), *enforced*, 377 F. 2d 983 (3d Cir. 1967), is misplaced. There the economic interest of the employer in the conditions of employment in the other bargaining units was much more remote than the News' interest here. In *Friedland* the employer had a collective bargaining agreement with Painters' Local 1221 which provided that when he worked within the geographic jurisdiction of Painters' Local 144 he would pay the wage scale which Local 144 had in its contract with a multi-employer group in its own area. When Local 144 struck its employer group during their negotiations, Friedland supported those employers by locking out nine of his employees who were members of Local 144. The Court of Appeals stated:

> ". . . [T]he Elizabeth Association was not involved in any bargaining negotiations with Local 144, the strike was not against that association or Friedland; nor were any demands being made upon them by Local 144. Clearly, Friedland had no legitimate bargaining position to protect." *Id.* at 988.

The Board warned in *Friedland*:

> "To allow this collateral or indirect interest in a labor dispute to be deemed a legitimate business interest, sufficient to serve as justification for a lockout of respondent's own employees is to arrive at a far reaching result never intended by the Supreme Court in *American Ship Building.*" *David Friedland Painting Co.*, 158 NLRB *supra* at 578.

We need not, and do not, question the result and the reasoning of the Court in *Friedland*, for our case is different in several critical aspects. The News was negotiating

with the same local and over many of the same issues as was the Free Press. The Free Press had been struck and there was a very real possibility that the News would also be struck. The News' lockout was designed to aid the News' own bargaining position, which could not be said, without great attenuation, for the lockout by the employer in *Friedland.*

This lockout was not "inherently so prejudicial to union interests and so devoid of significant economic justification" that it could be found to be unlawful without specific evidence of antiunion animus. This situation is not similar to a case where "many have broken a shop rule, but only union leaders have been discharged,"[4] since this lockout was not inherently discriminatory.

Further, since the News had been negotiating for an extended period of time and was threatened with strike action, it cannot be said that the lockout lacked "significant economic justification" insofar as the News was concerned.

Finally, Teamsters contends that the newspapers conspired to violate the antitrust laws by seeking identical economic settlements in an unlawful effort to restrain trade by eliminating labor costs as a competitive factor in their industry.

There are two answers to this contention. First, the issue is not properly before the Court under the order of remand issued by the Supreme Court, which was for the sole purpose of consideration in the light of *American Ship,* (wherein no such issue was involved). The Supreme Court did not adopt the suggestion of the Board that the case also be remanded for consideration in the light of *United Mine Workers v. Pennington,* 381 U. S. 657 (1968).

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[4] This is the example used by the Supreme Court to illustrate this test. *American Ship Bldg. Co. v. NLRB,* 380 U. S. 300 at 312.

Second, it was Teamsters, and not the newspapers, which presented a number of identical demands. The union, in pursuance of its own interest, may seek to obtain the same terms from other employers. *Id.* at 665. The News was not interested in all of the demands made by Teamsters upon the Free Press; only three were vital to it. As noted above, the News was acting in its own legitimate bargaining interest. The actions of these newspapers were pursuant to their individual interests in regulating their own labor relations, and no more. In the circumstances of this case, we see nothing unlawful in the newspapers' collaboration in their own defense.

The petition for review is denied.

APPENDIX "B".

NATIONAL LABOR RELATIONS BOARD.

(Caption omitted.)

Supplemental Decision and Order.

On January 15, 1964, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding, concluding, on the basis of the findings of fact set forth there and in the Trial Examiner's Decision attached thereto, that the Respondent violated Section 8 (a) (1) and (3) of the National Labor Relations Act, as amended, by locking out certain of its employees.[1] The Board's Order required Respondent to cease and desist from the unfair labor practices found and to take certain affirmative action designed to remedy those unfair labor practices. While this case was pending before the Sixth Circuit, the Supreme Court handed down its decision in *American Ship Building Company* v. *N. L. R. B.*, 380 U. S. 300. The Board moved the Sixth Circuit to remand the instant case so that the Board might reconsider it in the light of *American Ship,* but the Court denied the motion and reversed the Board's holding that the lockout had been unlawful. Subsequently, on January 17, 1966, the Supreme Court, pursuant to a petition for certiorari filed by the Teamsters, in which the Board joined to the extent of requesting a remand to the Board, vacated the judgment of the Sixth Circuit and remanded the case to the Court of Appeals with instructions that the case be remanded to the Board for further consideration of the impact of *American Ship.* The Court of Appeals on February 28, 1966, remanded the case to the Board. On April

[1] 145 NLRB 996. The Board dismissed other allegations of the complaint; they are not involved in the case at this point.

25, 1966, the Board invited the parties to file further briefs. Subsequently, briefs were filed by the General Counsel, by Respondent, and by Newspaper Drivers and Handlers' Local Union No. 372, International Brotherhood of Teamsters. A joint brief was also filed by Local 10, Detroit Paper Handlers' Union, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, and Detroit Newspaper Printing Pressmen and Assistants' Union of North America, AFL-CIO.

Pursuant to the Court's remand, the Board has reconsidered its Decision and Order. In doing so, the Board has considered the Trial Examiner's Decision, the exceptions and briefs, the supplemental briefs, and the record as a whole. For the reasons hereinafter set forth, the Board now finds that Respondent Evening News did not violate Section 8 (a) (1) and (3) by locking out its employees.

The relevant facts are as follows:

The News, which publishes an afternoon and Sunday edition, and the Free Press, which publishes a morning and Sunday edition, are the only large daily newspapers in Detroit. They are also the only members of the Detroit Newspaper Publishers Association, which handles the publishers' labor relations. Some 14 labor organizations represent employees of one or both papers. Bargaining with most of the unions has been conducted on a multi-employer basis through the Association. However, for about 20 years, each paper has bargained separately with the Teamsters as the representative of its distribution employees.

In October 1961, Teamsters gave notice to the Free Press of its desire to revise its contract expiring November 15, 1961. After some 17 bargaining sessions, on April 6, 1962, the Teamsters presented a revised proposal to the Free Press and advised that strike action would be recom-

mended to the membership on April 11 if a satisfactory offer was not received by that date. On April 11, the Free Press presented its "last best offer." The Teamsters' members in the Free Press unit rejected the offer and voted to strike; a picket line was set up that afternoon and the Free Press suspended publication.

In October 1961, the Teamsters also gave notice to the News of its desire for a revision of its contract, also due to expire on November 15, 1961, with that paper. Between October 27 and January 11, 1962, the Teamsters and the News held 13 bargaining sessions. Negotiations were then suspended until March 22, apparently due to the Teamsters' desire to concentrate on negotiations with the Free Press, and notwithstanding the News' expressed desire that negotiations continue without interruption. The parties met again on March 22 and the Teamsters agreed to submit revised contract proposals.[2] These proposals were submitted to the News on April 12, the day following the commencement of the strike at the Free Press.

Before the News received the revised Teamsters' proposals, its officials met with officials of the Free Press on April 9 and 10 to discuss what they considered to be their common problem vis-a-vis the Teamsters. The News concluded that of the 18 or so issues remaining between the Teamsters and the Free Press, 10 were also of interest to the News in its negotiations with the Teamsters. Of these 10 issues, the News considered 3 as being vital in its bargaining and urged the Free Press to maintain its position on these under all circumstances. The News agreed that if the Teamsters struck the Free Press over its refusal to accede to any of those three demands, "the News would

[2] Between January 11 and March 22, the News requested meetings, but the Teamsters did not honor the requests, assertedly because they were "too busy," were "making progress" on the Free Press negotiations, and for other reasons.

support the Free Press and would not publish." The two publishers further agreed that "the Union should not be informed that a strike against one is a strike against both or what the position of the News would be in case of a strike at the Free Press."

When Teamsters struck the Free Press on April 11, the News also ceased publication. It did not print or distribute any papers under dateline of April 12, 13, or 14, although all of its employees reported for work and were paid for those days. Under dateline of Sunday, April 15, the News published a "double-masthead" edition, called *The Detroit News—The Detroit Free Press*, "A Temporarily Combined Edition," which was distributed to News and Free Press subscribers by the News distribution employees. When work on the "double-masthead" edition was completed on April 15, the News notified some of its employees that they should not report for work until further notice, stating that "there was no work available."

Meanwhile, on April 13, Teamsters International President James Hoffa telephoned Association Executive-Secretary Robert Butz to arrange a meeting on the Free Press contract. He also told Butz that "the News had better be present or on a standby basis at the meeting because the issues at the News would have to be settled or they'd be on strike also." President Hoffa and local Teamsters officials met with the Free Press on the afternoon of April 13 and the morning of April 14; they met with the News in the afternoon of April 14. This meeting with the News was based on the Teamsters' revised proposals submitted on April 12 to the News, which contained the identical demands made on the Free Press as to the three "vital issues." The pending issues were not settled at these meetings. At the close of this meeting, according to Dorris, the News' negotiator, the following conversation occurred between him and Hoffa:

> He [Hoffa] said he wanted to inform us of a statement he had just given to the press, and radio. He said that he had informed them that they were going to call a union meeting and present to this meeting the company's last proposal. I corrected him that this was not the company's last proposal but it had been submitted December 22nd and was still considered the best offer at that time, we were still willing to continue negotiations. He replied in effect regardless of whether it is the best proposal—he paraphrased it—then this is your final best offer and it is going to be submitted to the union.

According to Association Executive-Secretary Butz, the parties did not then set a date for a subsequent meeting.

Teamster Local President O'Connor testified, without contradiction, that at the conclusion of the April 14 meeting he and Dorris had discussed the convening of a further meeting and that Dorris had told O'Connor that he wanted to take up with management the matters discussed at the meeting, and that O'Connor should call him on the following day (April 15) "in regards to setting up another meeting . . . if we felt it would be of benefit." O'Connor further testified that he called Dorris on April 15, and Dorris said he had not yet had a chance to discuss the issues with management, but that O'Connor should call him back the following day. Finally, O'Connor testified, on April 16 Dorris told him he had discussed the matter with management and "they couldn't see where there would be any benefit in setting up a meeting at that time."

Negotiations were resumed on April 18 when a meeting was held at the offices of Detroit Police Commissioner Edwards. By the end of the meeting, which lasted 33 hours, Teamsters and the Free Press reached complete agreement on a new contract. The Teamsters and the News

resolved some of their outstanding issues and agreed that all issues not resolved then or by further discussion were to be submitted to arbitration. On April 19, Teamsters ended its strike against the Free Press and the News ended its lockout.

The sole issue before the Board at this juncture is whether Respondent Evening News' lockout of its Teamsters' unit employees from April 16 to April 19, 1962, violated Section 8 (a) (1) and (3) of the Act.[3] Until *American Ship*, the Board regarded a bargaining lockout as presumptively or *prima facie* unlawful, essentially on the theory that a lockout in effect punishes employees because their bargaining agent is seeking certain concessions and benefits at the bargaining table. Employers, in the Board's view, had no right to use the lockout as an offensive weapon, to foster their own bargaining proposals by putting this kind of economic pressure on the employees. On the other hand, the Board regarded lockouts as legitimate which were defensively motivated, e. g., *Labor Board* v. *Truck Drivers Local Union (Buffalo Linen Supply Co.)*, 353 U. S. 78 (lockout by a multi-employer bargaining unit as a response to a whipsaw strike against one of its members); *International Shoe Co.*, 93 U. S. 807 (to forestall repetitive disruptions of an integrated operation by quickie strikes); *Betts Cadillac-Olds*, 96 NLRB 268 (to avert immobilization of cars brought in for repair).

There is no question but that the Supreme Court's *American Ship* decision has obliterated, as a matter of law, the line previously drawn by the Board between offensive and defensive lockouts. For the Supreme Court

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[3] The Board found in its original decision in this case that the incidental layoffs of other employees during this period also violated Section 8 (a) (1) and (3) of the Act. In view of our decision herein, there is no occasion to consider this aspect of the case.

squarely held in *American Ship* that an employer could lock out, after an impasse in bargaining had been reached, for the sole purpose of bringing economic pressure to bear on the union to accept the employer's legitimate bargaining position. We can no longer conclude, therefore, that a lockout is unlawful solely because it is not defensive in nature.

The Court's holding in *American Ship,* it is true, was explicitly stated to be a narrow one—the Court in its own words was "concerned with . . . the use of a temporary layoff of employees solely as a means to bring economic pressure to bear in support of the employer's bargaining position after an impasse has been reached. This is the only issue before us and all that we decide." 380 U. S. at 308. But, although the holding was thus confined, the reasoning of the Court must obviously be taken into account in deciding a case such as the instant one, even though it does not present the exact situation present in *American Ship.* The Court stated that the test of a lockout's legality, assuming no motive to discourage union activity or to evade bargaining exists, is whether the lockout "is inherently so prejudicial to union interest and so devoid of significant economic justification" that no evidence of intent is necessary. That test affords the basis for our determination here.

Applying these principles to the instant case is not an easy task, particularly because the events occurred almost 5 years ago, at a time when the parties' positions were undoubtedly taken with regard to and influenced by the state of then extant Board law.[4] While we cannot turn back the clock and speculate now what Respondent's position

[4] Thus, had Evening News locked out then for the stated purpose that it believed that an impasse had been reached in its bargaining negotiations with the Teamsters, and it wished to bring economic pressure to bear on the Union, it would have been conceding a violation of the Act under Board Law.

would have been had *American Ship* already been on the books, fairness requires that we consider this factor in evaluating Respondent's then asserted reason for the lockout. We believe the facts of this case plainly warrant the conclusion that Respondent's lockout was preponderantly designed to force the Union to accept the Company's bargaining proposals, and we so find. As shown by the facts, *supra,* the parties had been bargaining for an extensive period of time before the lockout occurred, and only because of the Union's refusal to honor the Company's requests to meet was there any hiatus in the bargaining negotiations. Furthermore, the Teamsters had taken a position on certain issues—and struck the Free Press over those issues—which the News was determined to resist. Indeed, Teamster President Hoffa told News negotiator Dorris that he considered the News offer as its "last proposal" and "final best offer." Hoffa also told Association Executive-Secretary Butz, while arranging a meeting on the Free Press contract, that "the News had better be present . . . because the issues at the News would have to be settled or they'd be on strike also." It is thus evident that, from the News' standpoint, the central issues dividing the parties were clearly identified, and Hoffa had threatened the News with a strike, stating also that he regarded the Company's proposal as a final offer. In these circumstances, we are satisfied that both parties viewed their negotiations as being deadlocked on key issues, and that neither doubted that a work stoppage would be required to break the deadlock.

Also pertinent to our consideration of this case at this stage is the impact of Respondent's agreement with the Free Press to lock out its own employees if the Union struck the Free Press, as well as the fact that the lockout itself had this stated purpose. The Board's earlier conclusion that Respondent violated the Act was predicated on the reasoning that a lockout could legally be utilized

only as a defensive maneuver, and that the existence of a true multiemployer unit was a *sine qua non* to its utilization by a non-struck employer when the Union struck another employer. The Board rejected Respondent's asserted defense, which argued for an extension of the *Buffalo Linen* principle to cover a situation such as existed here, where the employers involved, although not technically engaged in multiemployer bargaining, were the only two daily newspapers in Detroit, were in direct competition with each other, were bargaining with the same union, and were faced with virtually identical bargaining demands by that Union. Having rejected the *Buffalo Linen* defense, the Board thereupon viewed the situation as constituting a traditional offensive, and therefore unlawful, lockout under then existing decisions.

American Ship, however, as we have pointed out, has changed the ground rules to some extent, so that the inquiry does not end by concluding that a lockout is not wholly defensive in nature. Rather, as the Supreme Court stated, the test of a lockout's legality, assuming no motive to discourage union activity or to evade bargaining exists, is whether the lockout "is inherently so prejudicial to union interest and so devoid of significant economic justification" that no evidence of intent is necessary.

We are convinced that the circumstances of this case show both a significant economic justification for the lockout, and a lack of conduct significantly prejudicial to union (or employee) interests. Here, Respondent News had bargained for many months with the Union, and the parties were deadlocked on significant issues. Apart from the interest of the News in supporting the Free Press, the News, like the Free Press, was engaged in bargaining at the same time, with its contract having expired on the same date, and with the key demands of the Union being pressed upon each employer simultaneously. The Union had suspended negotiations with the News, and Teamster

President Hoffa had explicitly threatened a strike against the News, armed at the time with a strike authorization by the Teamsters' membership against both papers. The interest of the News in using economic pressure to implement its own bargaining was thus grounded upon a very real, direct, and immediate bargaining motivation in its own behalf.

Our determination is based on the facts of this case and is not meant to suggest either that all supportive lockouts are lawful, or that all lockouts which are intended to pressure a union into accepting an employer's legitimate proposals are necessarily lawful. Rather, the legality of any lockout must be determined with regard to the criteria laid down by the Supreme Court. *American Ship* cautions against the promulgation of any hard and fast rule for determining whether a particular lockout is lawful; it does not insulate all lockouts from illegality solely because no "bad" motive exists. We conclude, for the reasons indicated, that the complaint in this case should be dismissed.

Order.

Pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

Dated, June 29, 1967, Washington, D. C.

.....
Frank W. McCulloch, Chairman

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John H. Fanning, Member

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Howard Jenkins, Jr., Member
National Labor Relations Board.

(Seal)

Member Zagoria, concurring:

I concur in the results.

Dated, Washington, D. C. Jun. 29, 1967.

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Sam Zagoria, Member
National Labor Relations Board

Member Brown, dissenting:

In my view of the facts, this case involves a situation where the Union was engaging in contemporaneous but separate contract negotiations with the Free Press and Respondent Evening News, each publisher's employees constituting a separate unit. Unknown to the Union, the Detroit News agreed that it would lock out its employees in support of the Free Press if the Free Press were struck by the Union for refusing to yield on three specific Union demands in which the News was particularly interested. The Union did strike the Free Press, and the News thereupon locked out its employees pursuant to the supportive lockout arrangement. At the time of the lockout there was no bargaining impasse between the Union and the News.

I would reaffirm the Board's original conclusion in this case[5] that, by locking out its employees, Respondent violated Section 8 (a) (1) and (3) of the Act. As the case involves two separate units rather than a multi-employed unit, *Buffalo Linen*[6] is no more applicable now than when the matter was first before us. Nor, in my judgment, does the Supreme Court's supervening *Ameri-*

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[5] 145 NLRB 996.

[6] *N. L. R. B. v. Truck Drivers Local Union No. 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L.*, 353 U. S. 87.

can Ship decision[7] require otherwise. Quoting the Board's own language from another case, the opinion of the Court in *American Ship* sets forth the then Board law to be that "absent special circumstances, an employer may not during bargaining negotiations either threaten to lock out or lock out his employees in aid of his bargaining position. Such conduct the Board has held presumptively infringes upon collective-bargaining rights of employees in violation of Section 8 (a) (1), and the lockout, with its consequent layoff, amounts to a discrimination within the meaning of Section 8 (a) (3)" (380 U. S. at 306). Then after describing some of the special circumstances wherein the Board exempted certain classes of lockouts from proscription, the Court began its analysis with the following statement of the precise issue presented in *American Ship*: "What we are here concerned with is the use of a temporary layoff of employees solely as a means to bring economic pressure to bear in support of the employer's bargaining position, after an impasse has been reached. *This is the only issue before us, and all that we decide*" (Emphasis supplied). (380 U. S. at 308). The Court stated in concluding its opinion that "we hold that an employer violates neither § 8 (a) (1) nor § 8 (a) (3) when, after a bargaining impasse has been reached, he temporarily shuts down his plant and lays off his employees for the sole purpose of bringing economic pressure to bear in support of his legitimate bargaining position" (380 U. S. at 318).

Since the Court has thus meticulously limited its decision to post-impasse lockouts, I perceive no justification for the Board now to extend such holding to absolve an employer who locked out his employees, not because of a bargaining impasse concerning his own employees, but to assist another employer in a labor dispute respecting

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[7] *American Ship Building Co. v. N. L. R. B.*, 380 U. S. 300.

terms and conditions of employment of the other employer's employes in their own separate unit.

Accordingly, I would find that Respondent has violated Section 8 (a) (1) and (3) of the Act.

Dated, June 29, 1967, Washington, D. C.

.....

Gerald A. Brown, Member
National Labor Relations Board.

APPENDIX "C".

UNITED STATES COURT OF APPEALS
For the Sixth Circuit.

(Caption Omitted.)

ORDER.

Before: Weick, Chief Judge, McCree and Coffin, Circuit Judges.

On petition to review an order of the National Labor Relations Board,

This cause came on to be heard on the transcript of the record from the National Labor Relations Board and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the petition to review be and the same is denied.

No costs awarded. Rule 39(b).

Entered by order of the Court.

Carl W. Reuss,
Clerk.

APPENDIX "D".

SUPREME COURT OF THE UNITED STATES.

(Caption omitted.)

Order Extending Time to File Petition for Writ of Certiorari.

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 15, 1969.

/s/ Potter Stewart,
Associate Justice of the Supreme Court of the United States.

Dated this 21st day of March, 1969.

APPENDIX "E".

Newspaper Drivers & Handlers, Local Union No. 372, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Inc.,
Petitioner,

v.

Detroit Newspaper Publishers Association et al.

382 US 374, 15 L ed 2d 423, 86 S Ct. 543

[No. 663]

January 17, 1966

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Same case below, 346 F2d 527.

David Previant for petitioner.

Philip T. Van Zile II for Detroit Newspaper Publishers Association et al., respondents.

Solicitor General Marshall, Arnold Ordman, Dominick L. Manoli and Norton J. Come for National Labor Relations Board, respondent.

Per Curiam.

The petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, the judgments are vacated and the case is remanded to that court with instructions that the case be remanded to the National Labor Relations Board for further consideration in light of American Ship Building Co. v. Labor Board, 380 US 300, 13 L ed 2d 855, 85 S Ct 955.

APPENDIX "F".

Opinion of the Court.

(Caption omitted.)

Cecil, Circuit Judge. This cause is before the Court upon the petition of Detroit Newspapers Publishers Association, The Evening News Association, owner and publisher of the Detroit News, and Knight Newspapers, Inc., owner and publisher of the Detroit Free Press, to review and set aside an order of the National Labor Relations Board, hereinafter called the Board, issued on January 15, 1964. 145 NLRB 996. The Board seeks enforcement of the order. Detroit Newspaper Publishers Association, Evening News Association and Knight Newspapers, Inc. will be referred to herein as the Association, the News and the Free Press, respectively.

The Board found the News, only, guilty of an unfair labor practice in violation of Section 8 (a) (1) and (3)[1] of the National Labor Relations Act, hereinafter called the Act (Section 158 (a) (1) and (3), Title 29, U. S. C.), by laying off or "locking out" certain of its employees, from April 16 to 19, 1962. The usual order followed. The News was directed to cease and desist from discouraging membership in certain unions or any other labor organization "by locking out any of its employees in order to support another employer which is struck by employees represented in a labor organization with which it does not bar-

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[1] 29 U. S. C., Sec. 158, "Unfair Labor Practices".

"(a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title:

. . .

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . ."

gain jointly in a multiemployer unit," and "(i)n any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self organization," etc. It was also directed to make whole its employees for lost time and post the usual notice.

The evidence relating to the question presented here is undisputed and may be stated as follows: The Association is a voluntary unincorporated association whose membership consists solely of the News and the Free Press. It was formed many years ago by the Detroit papers for the purpose of negotiating and administering labor contracts and handling the labor relations of its members. The News and the Free Press are the only large daily newspapers in Detroit. The News publishes in the afternoon of week days and on Sunday morning. The Free Press publishes daily in the morning, including Sunday.

In October, 1961, Newspaper Drivers & Handlers' Local Union No. 372, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., hereinafter called the Teamsters, and the petitioner in case No. 15743 herein, gave notice to the Free Press of its desire to revise its contract with the Free Press expiring November 15, 1961. The Free Press and the Teamsters held seventeen bargaining sessions between October 26, 1961, and March 20, 1962. On April 6th, the Teamsters presented a revised proposal to the Free Press and advised that strike action would be recommended on April 11th, if a satisfactory offer was not received by that date. About noon of April 11th, the Free Press gave the Teamsters its "last best offer" which was presented to and rejected by the Teamster members in the Free Press unit. The members voted to strike, a picket line was set up that afternoon, and the Free Press suspended publication.

In October, 1961, the Teamsters also gave notice to the News of its desire for a revision of its contract with that

newspaper. Between October 27, 1961, and January 11, 1962, the Teamsters and the News held thirteen bargaining meetings. The parties met again on March 22nd and the Teamsters agreed to submit revised contract proposals. Revised proposals were not submitted to the News until April 12th, the day following the commencement of the strike at the Free Press.

On April 9th and 10th officials of the News met with officials of the Free Press to discuss what were common problems with the Teamsters. It was found that of about eighteen issues between the Free Press and the Teamsters, ten of them were of interest to the News. The News urged the Free Press not to give in on three of them under any circumstances. The News agreed that if the Teamsters struck the Free Press over its refusal to accede to any of those three demands, it would support the Free Press and would not publish. The two papers further agreed that they would not inform the Union that a strike against one would be a strike against both, or what the position of the News would be in event of a strike at the Free Press.

It is conceded that the Free Press and the News do not bargain with the Teamsters jointly or as a multi-employer unit, as that term is traditionally used by the Board and the courts. The News ceased publication when the Teamsters struck the Free Press. It did not publish any papers under date line of April 12th, 13th or 14th. The employees reported for work on those days and were paid. On Sunday, April 15th, the News published a "double-mast head" edition called *The Detroit News-The Detroit Free Press.* "A Temporarily Combined Edition." Following this the News notified its employees not to report for work until further notice. The employees were out through April 19th.

On April 13th, James Hoffa, President of Teamsters International, asked Robert Butz, Secretary of the As-

sociation, to arrange a meeting on the Free Press contract. He also told Butz "that the News had better be present or on a stand-by basis at the meeting because the issues at the News would have to be settled or they'd be on strike also." Hoffa and the Teamster officials met with the Free Press on the afternoon of April 13th and the morning of the 14th. They met with the News on the afternoon of April 14th.

Subsequently, through the efforts of George Edwards, then Police Commissioner of Detroit, now a Judge of this Court, acting as mediator, the Free Press and the Teamsters reached an agreement. The News and the Teamsters agreed that issues not solved between them would be submitted to arbitration. The Teamsters ended its strike on April 19th and the News ended its lockout.

The Board's decision is to the effect that a lockout,[2] except in the case of multiemployer bargaining units or for the purpose of avoiding economic loss, is prima facie a violation of Sections 8(a)(1) and 8(a)(3) of the Act. On March 29, 1965, the Supreme Court handed down its opinion in *The American Ship Building Company* v. *National Labor Relations Board,* 380 U. S. 300. The opinion in this case is relevant to the case now before us. Counsel for the Board request us to remand the within case to the Board for further consideration in the light of *The American Ship Building* case.

The Board had all the evidence before it concerning the layoff of the employees of the News, including the background of the newspaper situation in Detroit, the past records of the News and Free Press in dealing with unions, the findings of fact of the trial examiner and the arguments of counsel on the question at issue. The view now taken by the Supreme Court was argued to the Board

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[2] A layoff of employees in connection with collective bargaining negotiations is commonly referred to as a "lockout."

and it chose not to follow it but to bottom its decision on its conclusion that any lockout, other than for the exceptions above mentioned, was illegal. This was consistent with the Board's former decisions. Neither side requested a remand and we see no reason why one should be made now. Furthermore, we are of the opinion that under the undisputed facts in this case a violation of Sections 8(a)(1) and 8(a)(3) could not be supported. The motion to remand is therefore denied.

While in *American Ship Building* there was an impasse in the negotiations between the employer and the union, we do not think the teaching of that case merely adds another exception to the Board's category of permissible lockouts.

As was said in that case, to establish a violation of Section 8(a)(1),

> "It must be shown that the employer has interfered with, restrained, or coerced employees in the exercise of some right protected by Section 7 of the Act. The Board's position is premised on the view that the lockout interferes with two of the rights guaranteed by Section 7: the right to bargain collectively and the right to strike. In the Board's view, the use of the lockout 'punishes' employees for the presentation of and adherence to demands made by their bargaining representatives and so coerces them in the exercise of their right to bargain collectively. It is important to note that there is here no allegation that the employer used the lockout in the service of designs inimical to the process of collective bargaining. There was no evidence and no finding that the employer was hostile to his employees banding together for collective bargaining or that the lockout was designed to discipline them for doing so." 380 U. S. at 308.

It is likewise true in the case before us "that there is no allegation that the employer used the lockout in the service of designs inimical to the process of collective bargaining" (Supra). There is no finding that the News was hostile to the Teamsters, or that it in any way attempted to interfere with the Teamsters' right to collective bargaining, or that the layoff was designed to discipline the employees for adhering to its union demands. Nor would the facts support such a finding. The News as well as the Free Press had a long record of dealing with the Teamsters. There was no disposition manifested to refuse to bargain with the Teamsters or to discourage membership in its union. Nor was there any animus shown toward the organization of the Teamsters or any of its members. The only question between the News and the Teamsters concerned the terms of the collective bargaining agreement.

With reference to a violation of Section 8(a)(3) the Court said:

> "To find a violation of Section 8(a)(3) then, the Board must find that the employer acted for a proscribed purpose. Indeed, the Board itself has always recognized that certain 'operative' or 'economic' purposes would justify a lockout. But the Board has erred in ruling that only these purposes will remove a lockout from the ambit of Section 8(a)(3), for that section requires an intention to discourage union membership or otherwise discriminate against the union. There was not the slightest evidence and there was no finding, that the employer was actuated by a desire to discourage membership in the union as distinguished from a desire to affect the outcome of the particular negotiations in which he was involved." 380 U. S. at 313.

What the Court said about the lack of evidence and findings is equally true in the case at bar. The Court con-

cluded "that where the intention proven is merely to bring about a settlement of a labor dispute on favorable terms, no violation of Section 8(a)(3) is shown." 380 U. S. at 313.

In Labor Board v. Brown, 380 U. S. 278, the Court said:

> "We begin with the proposition that the Act does not constitute the Board as an 'arbiter of the sort of economic weapons the parties can use in seeking to gain acceptance of their bargaining demands.' Labor Board v. Insurance Agents, 361 U. S. 477, 497. In the absence of proof of unlawful motivation, there are many economic weapons which an employer may use that either interfere in some measure with concerted employee activities, or which are in some degree discriminatory and discourage union membership and yet the use of such economic weapons does not constitute conduct that is within the prohibition of either Sections 8(a)(1) or (3)." 380 U. S. at 283.

And further, at p. 286, "Under that section (8(a)(3)) both discrimination and a resulting discouragement of union membership are necessary but the added element of unlawful intent is also required."

In *N. L. R. B.* v. *Truck Drivers Union,* 353 U. S. 87 (*Buffalo Linen*) the Court said, at p. 92:

> "Although, as the Court of Appeals correctly noted, there is no express provision in the law either prohibiting or authorizing the lockout, the Act does not make the lockout unlawful *per se.* Legislative history of the Wagner Act, 49 Stat. 449, indicates that there was no intent to prohibit strikes or lockouts as such."

We conclude that the Board was in error in finding that the lockout of employees by the News was prima facie a violation of Sections 8(a)(1) and 8(a)(3). We further conclude that the violations of Sections 8(a)(1) and

8(a)(3), as found by the Board, are not supported by a consideration of the record as a whole. The order of the Board is therefore vacated and enforcement denied.

In appeal No. 15743, the Teamsters, as petitioner, challenge the Board's findings: 1. that the suspension of publication by the News from April 12 to April 14, 1962, did not constitute a threat to lock out employees in violation of Sections 8(a)(1) and 8(a)(3) of the Act; and 2. that the Free Press and the Association did not violate Sections 8(a)(1) and 8(a)(3) of the Act by implementing their agreement with the News. The petitioner concedes that its position can only be sustained in the event that the Court holds that the lockout by the News was a violation of the Act. Since we hold that this lockout was not in violation of the Act, the petition of the Teamsters is dismissed.

APPENDIX "G".

Decision of the National Labor Relations Board.

(Caption omitted.)

Decision and Order.

On June 6, 1963, Trial Examiner Harold X. Summers issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. The Trial Examiner also found that the Respondents had not engaged in certain other unfair labor practices, and recommended that the allegations of the complaint pertaining thereto be dismissed. Exceptions to the Intermediate Report and supporting briefs were filed by the Respondents and the General Counsel; exceptions only were filed jointly by Local 12, Detroit Photo-Engravers' Union, International Photo-Engravers' Union of North America, AFL-CIO; Detroit Stereotypers' Union No. 9, International Stereotypers' and Electrotypers' Union of North America, AFL-CIO; Newspaper Guild of Detroit, American Newspaper Guild, AFL-CIO and, Local No. 58, International Brotherhood of Electrical Workers, AFL-CIO, four of the Charging Parties herein. Exceptions with supporting memorandum of authorities were filed by Newspaper Drivers and Handlers Local Union 372, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., another of the Charging Parties herein.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated

its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings,[1] conclusions, and recommendations of the Trial Examiner to the extent they are consistent with this decision.

The essential facts herein are not in dispute and are fully set forth in the Intermediate Report. Briefly, they show that the Respondents are the Detroit Newspaper Publishers Association and its two members, i. e., the Evening News Association, owner and publisher of The Detroit News, and Knight Newspapers, Inc., owner and publisher of The Detroit Free Press.[2] The publishers, with the Association as their agent, have bargained historically in multi-employer units with the Pressmen, Stereotypers, Mailers, ITU, IBEW, Engineers, Machinists, Mechanics, and Local 10, Detroit Paper and Plate Handlers' Union, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, herein called PPH.[3] The

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[1] The Respondents and the General Counsel have excepted to certain credibility findings. As it is the Board's established policy not to overrule a Trial Examiner's resolutions with respect to credibility unless, as is not the case here, the clear preponderance of all the relevant evidence convinces us that the resolutions were incorrect, we find insufficient basis for disturbing the Trial Examiner's credibility findings. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 198 F. 2d 362 (C. A. 3).

[2] The Respondents are hereafter also called the Association, the News, and the Free Press, respectively. The News and the Free Press are also collectively called the publishers.

[3] In connection with its notice of intention to open negotiations for its 1961-63 contract, PPH made timely request for separate

publishers traditionally have bargained with the Teamsters in individual units.

1. The events in issue occurred in 1962. On February 14, the News was unable to publish because of a work stoppage by its paper and plate handlers, represented by PPH; the Free Press thereupon suspended publication of its February 15 edition but did not lock out its employees. On April 11 through 19, the Teamsters picketed the Free Press; on April 12, 13 and 14 the News suspended publication, without locking out its employees, and on April 16 through 19 locked out its employees. Finally, from May 7 through 9 the paper and plate handlers struck at the News, and on May 8 and 9 the Free Press locked out its employees.

By way of background, the record reveals that between 1955 and November 1961, i. e., prior to the above incidents and prior to the 10 (b) period,[4] each of the Respondent publishers consistently suspended publication and/or locked out its employees whenever the other publisher was confronted with a work stoppage by employees represented by a labor organization with which the Respondents bargained in the multiemployer unit. However, there was no evidence, during this period, of similar supportive sus-

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bargaining with the News and the Free Press. The publishers rejected the request, insisting on continuing their joint bargaining. Thereafter, PPH bargained jointly with the two publishers and on February 15, 1962, signed a joint agreement to arbitrate the terms of the new contract. We find that the Trial Examiner correctly rejected the General Counsel's contention that as a result of the request for separate bargaining the multiemployer unit ceased to exist.

[4] Respondents excepted to the Trial Examiner's admission of evidence predating the 10 (b) period. We find that the Trial Examiner properly accepted and considered this as background evidence to shed light on events occurring within the 10 (b) period. Cf. *Southern Electronics Company, Inc.*, 131 NLRB 1411; *Bryan Manufacturing Company*, 362 U. S. 411.

pensions or lockouts in any dispute with a labor organization with which Respondents bargained in single employer units.

On the basis of the above conduct, as well as evidence in the record of statements by Respondents' agents and stories published in their newspapers concerning the suspensions and lockouts, the Trial Examiner found that the Respondents were parties to an unwritten but well-known suspension agreement to the effect that if either publisher suffered a work stoppage, the other would suspend its own publishing operations. He specifically found that this agreement was not confined to the multiemployer bargaining units in which the Respondents negotiated but was intended to apply to all unions with which both publishers bargained, whether in multiemployer or single-employer units. The Trial Examiner concluded that because of its breadth (i. e., its coverage of single-employer bargaining units), the suspension agreement was violative of Section 8 (a) (1), and that since the existence of the pact was made known to the employees, it tended to inhibit them in the exercise of their Section 7 rights. We do not agree with all of the Trial Examiner's findings and conclusions concerning the nature of the suspension pact.

It is clear that, except for the April lockout by the News while the Teamsters picketed the Free Press, all the incidents noted by the Trial Examiner involved lockouts which occurred automatically where one publisher was picketed by a labor organization with which the Respondents bargained in a multiemployer unit. The April suspension and lockout by the News, however, was not undertaken in the same fashion. Rather, it resulted from discussions between representatives of the two publishers on April 9 and 10 concerning their common problems in connection with their then current negotiations with the

Teamsters.[5] As set forth in the Intermediate Report,[6] the Respondents found that of the 18 issues remaining unresolved between the Teamsters and the Free Press, 10 were also of interest to the News in its negotiations with the Teamsters. Of these 10 issues, the News considered 3 as being vital in its bargaining and urged the Free Press to maintain its position on these under all circumstances. The News agreed that if the Free Press were struck because of its refusal to concede on any of these three demands, the News would support the Free Press and would not publish. It was further agreed that this understanding would not be communicated to the Teamsters, and there is no evidence that there was any breach of this aspect of their agreement.

On the basis of all the facts, we find that the Respondents were parties to two suspension agreements. One agreement was not intended as an offensive weapon but was for the purpose of protecting the integrity of the multiemployer bargaining units. It had existed for many years, and was well known to the employees and their bargaining representatives. The other, reached in April, 1962, was restricted to the current negotiations with the Teamsters, and was not made public. Contrary to the Trial Examiner, we find no basis for concluding that the long-standing agreement was intended to encompass bargaining in single-employer units, particularly since the only showing of supportive action in a single-employer unit was concededly preceded by the specific understanding noted above. If the long-standing agreement had contemplated suspension or lockout action against employees represented in single-employer bargaining units,

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[5] Throughout their separate negotiations, the publishers met with each other to discuss their common problems and issues with the Teamsters' demands.

[6] See item 14 of the Trial Examiner's chronology of events.

there would have been no purpose in the publishers' discussions of April 9 and 10 or the resulting agreement relating to 3 out of 18 unresolved issues. We further find, on this record, that the long-standing pact was an agreement to take action which has been held lawful in the *Buffalo Linen* case,[7] and, as found below, there is no evidence of any acts by the Respondents pursuant thereto within the 10 (b) period which would lead to a different conclusion. Accordingly, we find no unfair labor practice in the existence or publication of the long-standing agreement in the multiemployer units.

However, we have held, for substantially the reasons set forth by the Trial Examiner herein, that an agreement to engage in supportive lockout action by employees who do not bargain jointly in a multiemployer unit contemplates conduct which exceeds the permissible defensive limits under *Buffalo Linen*.[8] Since the Respondents herein have bargained with the Teamsters in separate units, the News, in April 1962, undertook to engage in an unlawful act. However, in order to constitute a violation of Section 8 (a) (1) of the Act, it must be established that this conduct tended to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7,[9] and that could be shown here only if, as the General Counsel contends, the agreement amounted to a threat to lock out the employees. This, in turn, depends on whether the employees or their representatives

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[7] *Buffalo Linen Supply Co.*, 353 U. S. 917. Cf. *Publishers Association of New York City*, 139 NLRB 1092, 1096-1097.

[8] *Buffalo Linen Supply Co., supra; The Great Atlantic and Pacific Tea Company*, 145 NLRB No. 39.

[9] Cf., *Southern Cotton Oil Crude Mill*, 144 NLRB No. 92; *The Great Atlantic & Pacific Tea Company*, 123 NLRB 747, 752-753; *Jackson Tile Manufacturing Company*, 122 NLRB 764, 765, 786.

were informed or knew of the existence of the agreement. As noted above, the record here contains no evidence that the April 10 agreement was communicated,[10] and the evidence of the Respondents' past conduct shows no prior lockouts under similar circumstances from which employee knowledge could be inferred. Accordingly, we are unable to conclude that the mere entering into the agreement, without more, violated the Act.

In view of the above, we do not adopt the Trial Examiner's finding that the Respondents violated Section 8 (a) (1) by virtue of the existence of their suspension agreements and shall dismiss the complaint insofar as it alleges such a violation.

2. The Trial Examiner concluded that all of the 1962 suspensions and lockouts occurred pursuant to the single agreement which he found to exist, but that only the lockout by the News from April 16 to 19, inclusive, was violative of Section 8 (a) (3) and (1) of the Act. We agree with the Trial Examiner that the acts of February 15,[11] when the Free Press did not publish, and May 8 and 9, when the Free Press locked out its employees, did not constitute violations of the Act. We also agree with the Trial Examiner that no violation occurred by reason of the suspension of publication by Respondent News on April 12, 13, and 14, but we so find because we conclude,

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[10] The Trial Examiner's finding of communication was based solely on the employees' awareness of the older pact.

[11] In connection with the suspension of publication by the Free Press on February 15, we rely only on the fact that it acted to preserve the multiemployer bargaining unit, in accordance with the *Buffalo Linen* principle. We do not adopt the Trial Examiner's rationale that no violation occurred because there was no loss of employment. While the question of actual loss of employment and wages is relevant in our determination of the appropriate remedy if an unfair labor practice has been found, it is not determinative of whether or not an unfair labor practice has been committed.

on the facts, that there was no lockout of the employees and no showing that a lockout was threatened. Rather, the evidence indicates that all employees of the News worked and were fully paid, and, as previously noted, there is no evidence that the employees were aware that the News had agreed to close down if a strike occurred at the Free Press.

We further agree, for the reasons given by the Trial Examiner, that the lockout by the News on April 16 through 19 violated Section 8 (a) (1) and (3) of the Act. The Respondents concededly did not bargain with the Teamsters in a joint or multiemployer unit as that term has traditionally been employed by the Board and the Courts. The *Buffalo Linen* doctrine, under certain circumstances, permits a defensive lockout by a nonstruck employer for the purpose of preserving the integrity of the multiemployer bargaining unit. However, where as in the instant case, such an established unit does not exist, *Buffalo Linen* does not apply.[12]

Since the News' lockout of its Teamsters unit employees on April 16 to 19, inclusive, has been held to have violated Section 8 (a) (1) and (3), we further find that the incidental layoffs of other employees during this period also violated Section 8 (a) (1) and (3) of the Act.[13] Although

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[12] *The Great Atlantic and Pacific Tea Company, supra,* footnote 8.

Respondents conceded in their brief that their bargaining relationship with the Teamsters was not joint in the traditional sense of that term. They urged, however, that in view of the particular circumstances here involved, the Board should apply the principles of *Buffalo Linen* to the facts of this case because (1) the two publishers are the sole publishers of daily newspapers in the Detroit area, competing with each other for readers, advertisers, and employees, and (2) the bargaining issues created by the Teamsters contract demands at both the News and the Free Press were, to a significant degree, identical. We find that the Trial Examiner was correct in rejecting this contention.

[13] *The Great Atlantic and Pacific Tea Company, supra,* footnote 8.

the lockout was not directed against these other employees, their loss of employment was proximately and entirely due to the unlawful lockout of the Teamsters unit employees.

Unlike the Trial Examiner, however, we find that Respondent News alone engaged in unlawful conduct by virtue of its lockout action. In the absence of proof that the Free Press or the Association in any manner implemented the agreement, or engaged in any unlawful conduct pursuant to said agreement, we cannot, on the facts of this case, charge them with liability for the unlawful conduct of the News.

3. We agree with the Trial Examiner that the preparation, publication and distribution by Respondent News of a double masthead newspaper, entitled *The Detroit News-The Detroit Free Press*, "A Temporarily Combined Edition," datelined April 15, did not violate Section 8 (a) (1). However, we so find because of the absence of proof of unlawful motive or union animus.[14] To find, as the General Counsel would have us do, that the issuance of the double masthead constituted either a threat of lockout or an attempt to provoke a strike at the News would require that we infer such unlawful motivation from the events themselves. While this might be appropriate where the inference is inherent in the conduct itself, that is not the case here.

4. Having found that Respondent News alone violated Section 8 (a) (1) and (3) by locking out certain of its employees from April 16 to 19, inclusive, we shall order

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[14] The Trial Examiner found that Respondents presented a valid economic reason for issuing the double masthead edition, because April 15 was one week before Easter. Although we agree with the Trial Examiner's conclusion that no violation occurred, we do not rely on the economic reason.

that Respondent News make whole these employees for the loss of earnings suffered by them because of the discrimination against them by paying to each of them a sum of money equal to the amount he would have earned but for the unlawful lockout, less his net earnings during the period of such lockout. Backpay shall include interest at the rate of 6 percent per annum. We shall also modify the Recommended Order by limiting the remedy to the violations found herein.

Order.

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, the Evening News Association, owner and publisher of The Detroit News, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Newspaper Drivers & Handlers' Local Union No. 372, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Inc., or any other labor organization, by locking out any of its employees in order to support another employer which is struck by employees represented in a labor organization with which it does not bargain jointly in a multiemployer unit.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all

such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as amended.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Make whole all its employees who were locked out from April 16, 1962, to April 19, 1962, inclusive for any loss of pay they may have suffered by reason of the discrimination against them, by paying to each of them a sum of money equal to the amount he would have earned but for the said loss of employment, less his net earnings during the period of such loss. Backpay shall include interest at the rate of 6 percent per annum computed quarterly.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its plant in Detroit, Michigan, copies of the notice attached hereto marked "Appendix."[15] Copies of such notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by an authorized representative of the Respondent, be posted immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be

[15] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

taken by Respondent to insure that said notice is not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Seventh Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith.

It is further ordered that the complaint be dismissed entirely as to Respondent Knight Newspapers, Inc., and Detroit Newspaper Publishers Association and that it be dismissed insofar as it alleges other conduct by Respondent Evening News Association to be violative of the National Labor Relations Act.

Dated, Washington, D. C., Jan. 15, 1964.

/s/ Boyd Leedom,
Boyd Leedom, Member
/s/ John H. Fanning,
John H. Fanning, Member
/s/ Gerald A. Brown,
Gerald A. Brown, Member
(Seal) National Labor Relations Board.

INTERMEDIATE REPORT.

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Statement of the Case.

Upon unfair labor practice charges filed by various parties—see "The Unions," *infra*—against Detroit Newspaper Publishers Association, Knight Newspapers, Inc., and the Evening News Association, the General Counsel of the National Labor Relations Board issued an amended consolidated complaint on June 29, 1962, alleging that Respondents had engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the National Labor Relations Act, herein called the Act. Respondents' answers admitted some allegations of the complaint, denied or disclaimed knowledge of others, and, in substance, denied the commission of any unfair labor practices. Pursuant to notice, a hearing was held before the undersigned Trial Examiner, Harold X. Summers, at Detroit, Michigan, on September 17-20, September 25-27, and October 29-November 2, 1962.[1] All parties were afforded full opportunity to examine and cross-examine witnesses, to argue orally, and to submit briefs. Briefs have been filed by the General Counsel, by one of the Charging Parties, and (jointly) by the Respondent, which briefs have been fully considered.

Upon the entire record of the case, including my evaluation of the witnesses based upon the evidence and my observation of their demeanor, I make the following:

Findings of Fact.

I. The Employers.

Knight Newspapers, Inc., hereinafter called the Free Press, and Ohio corporation, and the Evening News Asso-

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[1] The hearing was closed by my telegraphic order of November 6, 1962, which order is hereby received in evidence as Trial Examiner's Exhibit 1.

ciation, hereinafter called the News, a Michigan corporation, own and publish the Detroit *Free Press* and the Detroit *Evening News*[2] *respectively.*[3] During the calendar year 1961, in the course and conduct of their newspaper operations, the Free Press and the News each were members of, and subscribed to, various interstate news services, among them the United Press International and the Associated Press; published various syndicated features; advertised various nationally sold products; caused newsprint, inks, and other goods and materials valued at in excess of $500,000 to be transported directly from States other than the State of Michigan to its plant at Detroit, Michigan; published newspapers and caused substantial numbers of them to be delivered directly to points outside the State of Michigan; and derived gross revenues from its printing and publishing operations in excess of $2,000,000.

I find that the Free Press and the News are employers engaged in commerce within the meaning of the Act.

The Detroit Newspaper Publishers Association, hereinafter called the Association, is a voluntary unincorporated association whose membership consists of the Free Press and the News. The Association consults with and advises its members on matters of labor relations and other fields of common interest and, on behalf of its members, negotiates contracts with and assists in the adjustment of grievances filed by labor organizations who represent employees of its members. It is a nonprofit organization whose expenditures are shared equally by its members.

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[2] When used herein, the names of the newspapers, as opposed to the names of the Respondents, will be italicized.

[3] The Free Press also owns and operates an office building with tenants other than itself; the News also owns and operates a radio and television station.

I find that the Association is an agent of the Free Press and the News.[4]

II. The Unions.

The respondents deal, with respect to certain of their employees, with one or another of fourteen (14) organizations.

Among these are the Charging Parties herein: Local 10, Detroit Paper & Plate Handlers Union, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, herein called PPH; Detroit Newspaper Printing Pressmen's Union No. 13, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, herein called Pressmen; Local 12, Detroit Photo-Engravers' Union, International Photo-Engravers' Union of North America, AFL-CIO, herein called Photo-Engravers; Detroit Stereotypers' Union No. 9, International Stereotypers' and Electrotypers' Union of North America, AFL-CIO, herein called Stereotypers; Detroit Mailers Union #4, International Mailers Union, herein called Mailers; Newspaper Drivers & Handlers' Local 372, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., herein called Teamsters; Newspaper Guild of Detroit, American Newspaper Guild, AFL-CIO, herein called Guild; and Local No. 58, International Brotherhood of Electrical Workers, AFL-CIO, herein called IBEW. The remaining organizations are: Detroit Typographical Union Local No. 18, International Typographical Union, herein called ITU; Local No. 547, International Union of Operating Engineers, herein called Engineers; District Lodge No. 60, International Association of Machinists, herein called Machinists; Garage Mechanics #698, International Association of Machinists,

[4] The Free Press, the News, and the Association may variously be referred to herein as the Respondents.

herein called Mechanics; Local No. 79, Building Service Employees; and a local (number unknown) of the Brotherhood of Carpenters and Joiners of America, herein called Carpenters.[5]

I find that all of the above organizations are labor organizations within the meaning of the Act.

III. The alleged unfair labor practices.

A. The issues.

The amended complaint, as further amended at the hearing, alleges, in substance, that the Free Press and the News and their agent, the Association, on and after November 2, 1961,[6] have been parties to, have maintained, and have given effect to an agreement, arrangement, understanding and practice—often referred to by the parties as a "pact"; for convenience' sake, the term "suspension agreement" will be used herein—to the effect that, if either the Free Press or the News is faced with a strike, stoppage of work, picket line, or refusal to cross a picket line, or with a threat thereof, on the part of any of its employees represented by a labor organization, the other newspaper would suspend its operations. Putting it bluntly, the General Counsel contends that the two newspapers and their agent, the Association, had agreed between them that any strike—or strike threat—against one newspaper would be considered a strike or threat against both, and that the newspaper not directly the target of the strike or strike threat would lock out its employees until the matter had been settled.

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[5] The following of the organizations named were represented at this hearing: Photo-Engravers, Stereotypers, Mailers, Teamsters, Guild, and IBEW. The rest were not.

[6] The parties are in agreement that the "10(b)" period with respect to this allegation shall be computed from May 2, 1962, the date of service of a number of the instant charges.

Pursuant to this suspension agreement—the allegations of the complaint and the arguments of the General Counsel continue—one or another of Respondents locked out its employees on a number of occasions:

(a) On or about February 15, 1962, the Free Press suspended its publishing operations while the News was engaged in a labor dispute.

(b) On April 12, 13, and 14, 1962, the News suspended its publishing operations while the Free Press was engaged in a labor dispute.

(c) From April 16 through April 19, 1962, the News suspended its publishing operations and locked out its employees, while the Free Press was engaged in a labor dispute.

(d) On May 8 and 9, 1962, Free Press suspended its publishing operations and locked out its employees, while the News was engaged in a labor dispute.

Moreover, it is the theory of the General Counsel that, even if the allegation of the existence of the suspension agreement fails for lack of proof, the incidents (a)-(d) above would nevertheless constitute unfair labor practices: By the Free Press in (a) and (d); and by the News in (b) and (c).

Finally, it is the contention of the General Counsel that the News, in the publication of a "double-masthead" dated April 15, 1962, while the Free Press was engaged in a labor dispute, sought to provoke a strike among employees at the News.

Respondents, in pleadings and arguments, take a number of positions. Denying that the suspension agreement existed, they urge, alternatively, that, even if there were such a pact, it would not be unlawful in the absence of

implementation; in short, the mere existence of an agreement by each newspaper to close down in the event of economic pressure exerted on the other by a union would not constitute a *per se* violation of the Act. As for the instances of alleged shutdowns and lockouts, they contend that their actions in these respects were justified (1) as lawful defensive actions to protect the integrity of a multiemployer unit, (2) as lawful defensive actions in the face of an imminent strike, (3) as dictated by economic necessity, and (4) as provoked by harassing union tactics. In this connection they argue that, with exceptions not relevant hereto, bargaining with the affected Unions was multiemployer and joint; specifically—in opposition to the position taken by the General Counsel—that bargaining with the Teamsters and With PPH was joint rather than individual.

With respect to the double-masthead, the News, in effect, denies that the publication thereof was designed to provoke any action by a union.

B. The setting.

The *Free Press* is a so-called morning newspaper whose first weekday edition is on the streets at or about 7 p. m. on the evening before and whose last edition is distributed at or about 2 a. m. of the date appearing in the masthead. The *News* is an afternoon newspaper, its weekday editions being distributed between late morning and 4 p. m. Both newspapers have Sunday editions, which are available on Saturday night and Sunday morning.

The circulation of the Free Press approximates 550,000 weekdays and 600,000 Sundays; that of the News, 725,000 and 915,000 respectively. The Free Press employs upwards of 1,400 employees and the News employs just over 2,500.

As is customary in the newspaper publishing business, the employees of both newspapers, generally speaking, are organized on a craft basis. The two newspapers deal with the 14 unions listed in "The Unions" *supra*, with whom they normally have a total of 21 collective-bargaining contracts.

To lend understanding to this matter, it appears in order to set down here a sketchy summary of the publication process of the two newspapers here involved. Employees of the advertising department procure advertisements, reporters obtain and write news, and editorial department employees prepare editorials and other features. Pictures at the News are processed into plates by its photo-engravers, the Free Press uses commercial shops for this purpose. The work-product goes to the composing room, where it is set up into forms by typographers. The stereotypers convert the forms, successively, into matrices and into plates curved to fit the presses. The paper and plate handlers transport the plates to the presses for the pressmen to affix. (They also transport the newsprint to presses and install it.) The pressmen operate the presses which print and fold the newspaper. Mailers then assemble the papers and transport them to truck tailgates. Platform men, drivers, and helpers load the trucks, and drivers deliver the contents to "drop stations," discussed elsewhere herein.

With respect to all times relevant hereto, the pleadings, stipulations, concessions, and testimony establish, and I find (1) that both newspapers dealt jointly, for single appropriate bargaining units of employees employed by both papers and in single contracts signed by both publishers, with the Pressmen, Stereotypers, Mailers, and ITU; (2) that both newspapers dealt jointly, for single appropriate units of employees employed by both papers but in separate contracts differing only in details, signed

by each publisher, with IBEW, Engineers, Machinists, and Mechanics;[7] (3) that the Free Press dealt separately with the Guild for its editorial, advertising, business office, inside circulation, and miscellaneous department employees, with the Building Service Employees for its maintenance employees,[8] and with the Carpenters for its carpenters; and (4) that the News dealt separately with the Photo-Engravers for its photo-engravers and with the Guild for its janitors, watchmen, and maids.

Respondents contend that both publishers dealt jointly with the Teamsters and with PPH; the General Counsel contends that they did not. The facts, discussion, and conclusions in these respects will be found *infra.*

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[7] The foregoing eight unions were alleged in the complaint to be bargaining jointly with the publishers, and Respondents' answers admitted the fact. At a late stage in the hearing, apparently because he felt that certain testimony elicited with respect to the bargaining history of IBEW, Engineers, Machinists and Mechanics might, by analogy, prejudice his contention of individual bargaining by Teamsters—see *infra*—counsel for the General Counsel moved to amend the compalint to allege individual bargaining by IBEW, Engineers, Machinists, and Mechanics. The motion to amend was denied. That ruling is here reaffirmed; to have ruled otherwise, on the eighth day of hearing, might, in my opinion, have resulted in prejudice to Respondents in their preparation for this hearing and in their cross-examination of prior witnesses. At any rate, the General Counsel is not prejudiced by this ruling since—as will be seen—I do not rely in my ultimate conclusion as to the bargaining relationship between the Teamtsers and the publishers, upon any similarities to or differences from the relationships between these four unions and the publishers.

I note that, in his brief, counsel for the General Counsel retreats to his original position—that IBEW, Engineers, Machinists, and Mechanics each bargain on a multiemployer basis.

[8] There were two bargaining units among the two collective-bargaining agreements covering maintenance employees at the Free Press: one for the janitors, the other for elevator operators and watchmen.

C. Chronology of events.[9]

1. In July of 1953,[10] the pressmen at the Free Press demanded premium pay for work on Independence Day. In support of their demand, they refused to work. The Free Press business manager, having ascertained that the News and the Times (a division of Hearst Publishishing, at that time the city's third major newspaper and a member of the Association) planned to publish their respective newspapers that day, issued orders that the demand of the pressmen be acceded to under protest. Publication of the Free Press was delayed 5½ hours; there was no interruption of publication of the other two newspapers.

2. In December of 1955 and January of 1956, publication of the *Free Press,* the *News* and the *Times* was suspended for 46 days. The stoppage began as the result of a strike by the Stereotypers in support of contract demands and a picket line around all three newspapers. Subsequently, other unions representing employees of one or more of the three newspapers decided that completion of their pending contract negotiations would be the price of their return to work. Eight contracts were negotiated to end the strike, and publication was resumed on January 17, 1956.

3. At or about 3 a. m. on August 17, 1957, 67 mailers employed by the News refused to work overtime. That evening when they reported for work they were dis-

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[9] My findings of what occurred—or did not occur—as recited in this section will not be repeated elsewhere in this report. References to items in this section will take the form of the abbreviation *"Chron,"* followed by the item number or numbers being alluded to.

[10] I here reaffirm a ruling made at the hearing over Respondents' objection—that evidence of events occurring prior to November 2, 1961, the "10(b) date" herein, was properly admissible. I shall consider such evidence for whatever light it may throw on occurrences within the 6 months preceding the filing of charges.

charged, and a picket line was installed at the News. The picket line was honored by the Teamsters, and the News suspended publication.

That evening, bearing the dateline Sunday, August 18, the Free Press and the Times each printed and caused to be distributed a so-called double-masthead, respectively the *Free Press and News* and the *Times and News*. After the distribution of these editions, the Free Press and the Times suspended publication of their newspapers. A notice posted by the Free Press informed its employees that their services would not be required until further notice.

After approximately 1 week, a settlement was reached; 61 mailers to be reinstated and the cases of the rest to be further negotiated. The picket line at the News was discontinued and publication of all three newspapers was resumed.[11]

4. During the morning of Wednesday, September 3, 1958, Joseph Eckhout, the Pressmen's chapel chairman at the Free Press, was discharged for countermanding a foreman's order. The Free Press pressmen reported for work that evening but instead of going to their workplaces went into meeting. This halted publication of the *Free Press*. It was the position of the publishers that the pressmen's action violated the joint contract with the three newspapers, and, for this reason, publication of the *News* and the *Times* was suspended Thursday morning.

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[11] Although the matter was not gone into in detail at this hearing, this incident bore overtones of an intraunion dispute. At that time Detroit Mailers Union No. 40, International Typographical Union—not to be confused with the ITU (Local No. 18) which represents the newspapers' typographers—represented the mailers of all three newspapers. The pickets, apparently, were defectors from Local 40, ITU, and a National Labor Relations Board representation proceeding was pending. Subsequently, the Mailers succeeded Local 40, ITU, as bargaining agent for the mailers employed by the newspapers.

After a union meeting held on Friday night, the International Pressmen's president announced that all pressmen would return to work on the following day. Although this came too late for publication on Saturday, all three newspapers put out Sunday editions.

5. On Labor Day, 1959, 12 of 76 pressmen at the News walked out in a dispute over lunch periods that day. Others joined in the walkout the next day, the effect of which was to stop publication of the *News*. The Free Press and the Times suspended publication. The suspension of publication of all three newspapers ended a few days later when the Pressmen's International ordered the News pressmen to return to work.

6. On November 7, 1960, the *Times* went out of existence.

7. For 4 or 5 days beginning August 19, 1961, a number of persons, in support of economic pressure being exerted by a local union of the Pressmen International (not involved here) upon a Miami newspaper, picketed the Free Press. The picket line was honored by the Pressmen, and the Free Press did not publish during this period.

During the same period, the News, which was not being picketed, maintained its normal operations and put out its newspaper.

8. For a number of years, the Free Press and the News —and the Times, when it was in existence—had bargained jointly with the PPH. On or about September 25, 1961, in connection with its notice of intention to open negotiations for a new contract following the expiration, on November 30, 1961, of its then existing contract, PPH asked for separate bargaining with the Free Press and the News. On or about October 31, 1961, the publishers, through the Association, rejected the request; they insisted on a con-

tinuation of joint bargaining.[12] Thereafter, PPH did bargain jointly with the publishers. In January 1962, PPH notified the publishers that its membership had authorized strike action. However, by February 14, 1962, negotiations for a new contract between PPH and the publishers had not been completed.

9. Between February 7 and February 12, 1962,[13] inclusive, a number of short work-interruptions took place among the paper and plate handlers of both publishers: There were two such interruptions on February 7 at the News, two more on February 9 at the News, and one each on February 12 at the News and at the Free Press. While delays may have occurred, none of these interruptions brought about a failure to publish.

I find that the cause of the interruptions (which took the form of chapel "meetings") was the concern among the paper and plate handlers over the status of contract negotiations.

On February 12, at or about 1 p. m.—before that day's interruption at the Free Press took place—Robert Butz, executive secretary of the Association, called together representatives of the various unions with which the publishers dealt. Members of management of both the Free Press and the News were present. Butz read to those assembled a telegram he had that day sent to the president of the PPH international:

> Paper and Plate Handlers Local No. 10 Have Created a Number of Work Stoppages at the Detroit News Since Last Wednesday, February 7. This Har-

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[12] It was on the basis of this request and rejection that—as noted in *"The Issues,"* *supra*—the General Counsel alleged that bargaining between the publishers and PPH since on or about October 2, 1961, was individual rather than joint.

[13] Unless otherwise indicated, all incidents described hereinafter in this section occurred in 1962.

assing Procedure Continues Today. But It Cannot and Will Not, Be Further Tolerated. The Publishers Intend to Either Operate These Newspapers on a Normal Schedule to Meet Production Needs or They Will Not Be Operated at All. A Definite Commitment as to Whether the Membership of Local No. 10 Will, or Will Not, Work Is Necessary Today. The Publishers Continue to Be Ready and Willing to Negotiate With Respect to the Expired Contract With Local No. 10 at Any Time Convenient to Both Parties. We Request That You Use Your Offices in Bringing This Matter to a Satisfactory and Immediate Conclusion.

Detroit Newspaper
Publishers Association
Robert C. Butz

Although requested, he declined to give those present copies of the telegram, but he reread it slowly so that they could take it down.[14]

Later that day, the president of PPH international sent a telegram to PPH (local) president informing him that, if the charges of Butz' telegram were true, PPH members must refrain from engaging in such interruptions.

10. Both newspapers published on February 13.

11. During the morning of February 14, the paper and plate handlers at the News, members of the PPH chapel

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[14] There was testimony by Guild President Schram and Teamsters President O'Connor that, in addition, Butz said, in effect, that if there was a repetition of the interruptions, both papers would shut down. Butz denied that there was any discussion other than that found above. Schram's and O'Connor's testimony on this point was vague. I believe that they misinterpreted the "warning" contained in the telegram, which although it complained of employee action at one newspaper, did speak of the production needs of both papers.

there, stopped work to have a meeting. Allegedly, the subjects under discussion were seniority rights, safety conditions, and the "repicking" of jobs—i. e., the right to bid for vacancies.[15] During the course of the meeting, the men were directed by management to go back to their work, but they declined to do so until their meeting was over; shortly thereafter, they were told that their services were no longer needed and that they should vacate the premises. They left.

The *News* was not published that day. At the Free Press that evening, no employees were sent home or lost pay, but the *Free Press* under dateline of February 15 was not published.

12. Meanwhile, a negotiating meeting between the publishers and PPH had been scheduled for 10 a. m., on February 14.[16] Because of the interruption that morning at the News—see *Chron.* 11—Butz had communicated with PPH international representatives and had rescheduled the meeting to 3 p. m. The parties—representatives of the publishers, international representatives of PPH, and the (local) PPH committee—met at that time. The meeting was recessed at 5 a. m. on February 15 and was resumed at 9 a. m. The result was an agreement to arbitrate the terms of a new contract.

13. That morning—February 15—the News' paper and plate handlers reported for work; after a short delay

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[15] I find that "repicking" was also an unsettled issue at the Free Press. Indeed, viewed in context—this being one of a series of on-the-job chapel meetings at the News and at the Free Press; my finding (in *Chron.* 9) that the paper and plate handlers of both newspapers were concerned with the status of current contract negotiations; and the fact that at this very time contract negotiations were being carried on—I find that the real cause of the February 14 shutdown by the News' paper and plate handlers was their dissatisfaction with or their efforts to influence the contract negotiations.

[16] A continuation of a meeting held on February 13.

because no sign-in sheets were available, they went to work. The *News* was published that day. So was the *Free Press*—bearing the dateline February 16.

14. The latest contracts between the Teamsters and the Free Press and the News, respectively, had expired on November 15, 1961. (Notices of a desire to revise the contracts were timely given.) Both the Free Press and the News, on or about November 13, had requested an indefinite extension of each contract subject to termination by either party on 5 days' notice, but the Teamsters had rejected these requests; thereafter, the terms of the respective contracts were continued on a day-to-day basis. Negotiations between the Teamsters and the Free Press and the News, respectively, had been carried on,[17] without success. At some point early in the negotiations, the negotiating committee was given strike authority, a fact which was communicated to the publishers.[18]

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[17] The record contains the dates of negotiating sessions. No meetings were held on the News contract between January 11 and March 22; although meetings between these dates were requested by the News, the Teamsters did not honor the requests (1) because they were "too busy", (2) because they were "making progress" on the Free Press negotiations, (3) because of reasons not appearing in this record, or (4) because of some combination of these reasons. Meanwhile, six sessions had been held on the Free Press contract.

[18] I so find on the basis of the credited testimony considered in context. On December 4, 1961, the News "unit"—this term will be explained in "Teamsters bargaining—joint or individual?" *infra*—of the Teamsters voted to authorize any action necessary in support of an acceptable contract with the News; although Joseph Prebenda, Teamsters' secretary-treasurer did not know if this information had been transmitted to the News, he assumed they were aware of it—newspaper reporters were present when the action was taken. Butz, without contradiction, testified that he was advised by a Teamsters' representative, in December 1961, of an overwhelming strike vote concerning the News (testimony corroborated by James Dorris, the News' associate business manager in charge of labor relations), and, prior to March 22, 1962, of a similar vote being taken among the Free Press employees.

The General Counsel urged that the basis for the resolution of the News unit authorizing strike action was tied to a particular

On April 6, the "latest" revised proposal of the Teamsters with respect to a new Free Press contract was presented to the Free Press, with the statement that a membership meeting was being held on April 11 at which the stewards and executive board of the Teamsters would recommend strike action as of 4 p. m. on that date if a satisfactory offer had not been received from the Free Press. They (the Teamsters) were asked to reconsider their demands and to formulate what they considered those requirements the failure to grant which would call for a strike. The Teamsters gave the matter further thought and, later that day or during the next day, transmitted a slightly revised set of proposals.

On April 9 and 10, representatives of the Free Press met with those of the News to discuss what they considered to be their common problems *vis-a-vis* the Teamsters. They concluded, looking at the "18 issues remaining" between the Free Press and the Teamsters, that 10 were "joint"—i. e., of interest to the News in its negotiations as well. Of these 10, the News representatives urged the Free Press not to "give in" under any circumstances on 3: The Teamsters' demand for union consent in advance of any changes in the operations of the circulation department, the definition of the workday or workweek, and a demand for what the publishers considered to be a greater wage increase than had been granted to other unions in this round of contracts. The News agreed that, if the Free Press was struck because of its refusal to give in on any of these demands "the News would support the Free Press and would not pub-

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grievance (bidding for jobs) rather than to the negotiations of a new contract. The supporting testimony was vague, to say the least; at any rate, this reason for the strike authorization was not conveyed to the News. I find that, the News reasonably understood that the News unit's strike authorization was related to the negotiations for a new contract.

lish''—a position which, it was further agreed, would not be communicated to the Teamsters.

On April 10, representatives of the Free Press and of the Teamsters met. Some concessions were made by both sides, but full agreement was not reached.

At midday on April 11, the Free Press gave the Teamsters its ''latest best'' offer.

15. That afternoon—April 11—there was a meeting of the members of the Free Press unit of the Teamsters. The negotiating committee presented the Free Press' latest offer to them. They rejected the offer, and at 4:20 p. m. on that day, they set up a picket line at the Free Press, which line was maintained until April 19. Because of this picket line, publication of the *Free Press* was suspended from April 11 through April 19.

16. The last meeting between the Teamsters and the News had taken place on March 22. At that time, it was arranged that the Teamsters would submit revised proposals for their new contract. On April 12, a set of revised proposals, dated April 9, were received by the News—after the picket line at the Free Press had been installed.

17. As indicated, a picket line had been set up at the Free Press. There was no picket line at the News. Nevertheless, the News put out no paper for April 12, 13, or 14. During this period, its employees reported for work, and none of them lost any pay.

18. Pursuant to a joint decision of the publishers made two days earlier, the News, on Saturday, April 14, under the dateline of Sunday, April 15, prepared a double-masthead newspaper called *The Detroit News-The Detroit Free Press,* ''A Temporarily Combined Edition'' (One or more

of the involved unions had been notified in advance of the News' intention to publish such a newspaper and after consultation had agreed to perform the work necessary for its preparation.) A somewhat larger number of papers was printed than was normally printed by the News; a somewhat larger-than-normal complement of employees was used;[19] and a somewhat greater-than-normal amount of overtime was performed. News drivers were instructed to pick up certain inserts from the Free Press plant despite the fact that their union, the Teamsters, was maintaining a picket line at that location; and, having cleared in advance with officials of that union, they did make the requested pickups. The combined edition, when distributed, contained features regularly appearing in the *Free Press,* including comics and supplements picked up at the Free Press plant, and advertisements by Free Press advertisers. Distribution was made by News Drivers, to Free Press as well as to News drop stations.

The cost of producing the combined edition was undertaken by the News, except for those parts which had been picked up from the Free Press plant. There was no charge to advertisers for those advertisements which would have appeared in the Free Press only; Free Press subscriptions were extended in cases where Free Press subscribers received no copy; and the only income received by the Free Press was from those Free Press subscribers who received and paid for copies.

The total cost of publishing the double-masthead—as contrasted with normal publication of each paper separately—is probably incapable of computation.

19. After the issuance of the double-masthead of April 15, the News notified various of its employees that they

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[19] The extra employees were persons usually employed by the Free Press or by other employers in the city.

need not report for work until further notice. The notification was made by telephone calls or telegrams to union representatives, announcements over television and radio, and notices posted at the News building. The doors were not physically locked, but any employee (not scheduled to work) was accompanied by a guard if he wanted to go to his workplace to pick up tools.

On April 16 and 17, the News did not publish. Instead, on one or both of those days, 50 pressmen and a number of paper and plate handlers were brought in to "clean up" the presses, a procedure made necessary when it is anticipated that the presses will not roll for a period of time, and a number of paper and plate handlers unloaded newsprint from standing boxcars.

20. Meanwhile, shortly after the Teamsters' picket line was established at the Free Press on April 11, contact between the parties to resolve the issues was established. On the afternoon of April 12, the Teamsters and the Free Press met with Federal and State mediators, but no agreement was reached.

On April 13, James Hoffa, Teamsters' International president, made a telephone call to Robert Butz, association executive secretary; as a result, a meeting of the Teamsters and the Free Press was arranged for 3 o'clock. The meeting,[20] a 4-hour session, achieved no concrete results.

On April 14, the Teamsters, including Hoffa, met with the Free Press in the morning and with the News in the

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[20] I credit Butz' testimony that Hoffa said, in this telephone call, "the News had better be present or on a standby basis at the meeting because the issues at the News would have to be settled or they'd be on strike also." (Hoffa did not testify.) As a result of the remark, representatives of the News "stood by" during the meeting between the Free Press and the News; however, they did not attend or participate in the discussions.

afternoon. The pending issues were not settled at these meetings. (At the meeting with the News, Hoffa protested against the double-masthead about to be produced and asked if the News intended to put out any more; he was told that the News had no plans for double-mastheads beyond the one then in preparation for distribution that night. At the same meeting, the Teamsters said they would present the News' latest proposals to the membership.)

Pursuant to an exchange of communications by telegram and telephone, a meeting was arranged to be held on Wednesday, April 18, at 10 a.m. at the offices of Detroit Police Commissioner Edwards. Present at that meeting, in addition to Commissioner Edwards, were Federal and State mediators, Butz, representatives of both publishers, and representatives of the Teamsters. This "mediation-negotiation" took place with the publishers in one room, the Teamsters in another, and Edwards traveling back and forth. The session lasted 33 hours—until 7 p. m. on the 19th. The results: Full agreement was reached on the Free Press contract,[21] and the picket line was to be removed; agreement was reached on some issues in the News' contract, other issues were to be further discussed, and all issues not resolved by the further discussion were to be arbitrated.[22]

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[21] The agreement was approved by the Teamsters' Free Press unit on April 20. It was subsequently reduced to writing, in May, but the last signature—that of Joseph Prebenda, Teamsters' secretary-treasurer—had not yet been affixed as of September 20, the 4th day of this hearing. Despite the fact that—in their brief—Respondents seem to question that a Teamsters-Free Press 1961-1963 contract was consummated on April 19, there appears to be no issue as of this time that a *de-facto* contract between the Teamsters and the Free Press has indeed been reached.

[22] Three meetings were held between the Teamsters and the News in May to narrow the issues further. As of October 30, the ninth day of this hearing, the arbitration proceeding was scheduled to be held on November 15-17.

21. Shortly after 7 p. m. on April 19, the Teamsters' picketing of the Free Press ended. Meanwhile—except for the double masthead of April 15—neither the *Free Press* nor the *News* had been published since the afternoon of April 11.

22. As soon as agreement was reached, both newspapers announced plans for a resumption of operations, but the typographers represented by the ITU refused to return to work. On Friday, April 20, in alleged protest against the lockout by the News,[23] they voted to strike against and began picketing both newspapers. This interrupted plans to resume operations.

23. At or about the same time—April 20—PPH, upon receipt of advice that the issues between the Teamsters and the Free Press had been resolved, held a membership meeting. There was a discussion as to whether members of PPH would return to work until they had been compensated by the News for the alleged lockout just ended and until all "differences" between them and the Free Press had been adjusted. As earlier indicated, however, the ITU had set up a picket line about both newspapers, and these actions of PPH had no immediate impact.

24. On or about April 27, the publishers offered, in addition to concessions made during prior negotiations, certain production changes asked by the ITU. On Sunday, May 6, the ITU accepted the publishers' offer and its picket lines were removed.

25. Meanwhile, on or about April 30, representatives of the publishers and of PPH had met. The publishers

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[23] There is dispute as to whether this was the true reason for their action. ITU's last contract with the newspaper had expired, by its terms, on November 30, 1961, and the terms of a new contract had not been reached. The publishers contend that the ITU action (1) was motivated by the state of the contract rather than by the alleged lockout and (2) was one of a series of "whipsawing" tactics by the involved unions.

had rejected PPH's claim for compensation by the News for the alleged lockout of April 16-19. During the evening of May 6, the ITU's picket lines having been removed, a representative of the Free Press asked Bart Piscitello, PPH president, if his people would report for work on the following morning if called. Piscitello replied that he did not know—that the membership had voted (on April 20) not to return to work until another membership meeting had been held and that a meeting was scheduled for the next afternoon, May 7. As a matter of fact, individual paper and plate handlers were asked by the Free Press to report for work on May 7; when they made inquiry of Piscitello, they were told not to report, and they did not.

26. During the early hours of May 7, individual members of PPH began picketing the News, their signs protesting a lockout in violation of agreement.[24] There was a membership meeting commencing about noon on May 7, at which the membership decided to sanction and to continue the picketing at the News, as a protest to its lockout. After the meeting, Piscitello publicly announced the willingness of members of PPH to report for work at the Free Press; moreover, in response to a specific inquiry by the Free Press PPH chapel chairman, the Free Press paper and plate handlers' foreman said that, with respect to May 8, he had no orders for a "markup" i. e., a scheduling of work.

27. As indicated, the Free Press, during the evening of May 6, had asked certain paper and plate handlers to report for work next morning; it also requested certain

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[24] The agreement referred to was an agreement to arbitrate collective-bargaining issues dated February 15, 1962, which agreement among other things, forbade any interruptions of work pending the arbitration. See *Chron.* 12.

pressmen to report.[25] None of the paper and plate handlers reported, except that at least one went to the Free Press building and, allegedly, found the garage locked. The pressmen who reported allegedly found their normal work entrances locked.

Much was made at the hearing of whether there was a literal lockout on the morning of May 6. Witnesses for the General Counsel and for the Free Press testified, respectively, that the work entrances were locked and were not locked. A resolution of the issue does not require crediting the witnesses for one side and discrediting those for the other.[26] I can and do credit them all; I find that, at or about 7 or 7:30 a. m., the doors were unlocked but that, at or about 9 a. m., reporting time, they were not.

I gain nothing, however, by this determination. While I would normally charge the owner of the doors with their condition (locked-ness) as of the time employees were supposed to report, I cannot do so here with impunity. First, the Free Press had, in fact, called employees in; second, steps were taken at an early hour to see that the doors were open to receive the employees.[27] That an "outsider" thereafter locked the doors is an explanation as compatible with reality as that they were locked by the Free Press.

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[25] In order to resume publication after a period of idleness, only a number of "preparation" men—paper and plate handlers and pressmen—were necessary at the first stage. Only these were notified to report.

[26] All witnesses on the issue appeared to be credible.

[27] The General Counsel broadly insinuates that, although the Free Press may have been acting in good faith when it issued recall orders during the evening of May 6, it changed its mind when a picket line appeared at the News during the early hours of May 7 and, pursuant to the alleged pact, decided to refrain from resuming operations.

Fortunately, an answer to the question, "Who locked the doors?" is unnecessary to the disposition of this matter, for the General Counsel does not charge the Free Press with unlawful lockout action on May 7.

28. On May 8 and 9, because of PPH's picket line there, the News did not publish.

There was no picket line at the Free Press, but no *Free Press* was published on those days. There is a dispute as to whether (1) the Free Press, unpublished since April 11, failed to resume operations of its own volition, or (2) its employees were withholding their services. Factually—and I here reserve any legal conclusions—the resolution of this question largely depends upon whether there was a desire by the Free Press, communicated or otherwise, that its employees report for work on these days, and upon whether its employees were willing to report for work.[28]

I find that, at least during the evening of Sunday, May 6, the Free Press fully expected to publish on May 7 and had taken the preliminary steps to procure work personnel. I have found it unnecessary—see *Chron.* 27—to determine, for purposes of this case, why the employees called did not report for work on the morning of the 7th.

At a meeting between the Pressmen and the publishers held on the morning of May 7, the question of the alleged failure of pressmen to report at the Free Press that morning came up; I find—and this is an amalgam of the credited testimony of the witnesses—that the publishers were notified that the Free Press' pressmen were ready and willing to report for work. At midday on May 7, just before or during a meeting of the pressmen, Foreman Cre-

[28] On May 6, 7, and 8, the Free Press prepared a "dummy" newspaper—i. e., an edition written and composed but not printed. This is normally prepared when there is a possibility of publication on the day in question.

bassa of the Free Press informed Carroll, a pressman executive board member, that the order for pressmen that morning had been cancelled;[29] further, the Pressmen, that afternoon, informed the Free Press of the method by which its members should be recalled.[30] Also, as I have already found (see *Chron.* 26), PPH, the only other union whose members had failed to report on May 7, publicly announced the willingness of its members to work at the Free Press; indeed, its Free Press chapel chairman had been told by his foreman that no paper and plate handlers were scheduled to work on May 8. Nor, as far as the record reveals, were any mailers, for example, called to work on either May 6, 7, or 8.[31]

Accordingly, I find that the failure to publish the *Free Press* on May 8 and 9 was not due to the unwillingness or failure of employees to report for work.[32]

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[29] This is based upon the credited testimony of the witness Carroll. Weidler, business manager of the Free Press, stated that there never was a rescission of the call to work, but Crebassa did not testify.

[30] There was a centention that the offer was a conditional one —i. e., required the Free Press, contrary to its normal custom, to call for pressmen through the union rather than directly. Since, during a prolonged period of not working for their regular employer—they had done no work for the Free Press for almost a month—pressmen in Detroit often accept work engagements at other shops and since, in the event of a startup at the Free Press, the Pressmen would be obligated to "cover" for such pressmen by furnishing substitutes, I do not regard the requirement to recall through the union as indicating a desire on the part of the pressmen not to honor any Free Press call for employees. Significantly, when operations eventually resumed, the Free Press did call for pressmen through the union.

[31] The record shows that, although the *Free Press* was not published during this period, certain other employees, including composing room employees (represented by ITU), were on the payroll.

[32] Counsel for the Free Press does not contend that there was a *strike;* he contends merely that the Free Press did not publish on May 8 and 9 because key personnel would not report for work.

29. On Wednesday night, May 9, the membership of the PPH held a meeting. At this meeting, PPH ordered the members to return to work; thereafter, they voted to end the strike against the News, withdraw the picket line, and return to work.

That night or during the morning hours of May 10, employees of both newspapers were called back to work, and both resumed publication on May 10.

30. On May 10, 1962, representatives of the Guild met with members of the Free Press management. The subject of discussion was a telegram sent 2 days earlier from the Guild to the Association, which telegram protested the layoff of employees by the Free Press where "no labor dispute exists." In the course of the discussion, Mr. Weidler, business manager of the Free Press, said, "Don [Donald Schram, president of the Guild], you know very well the Free Press could not resume publication until the dispute with the plate and paper handlers had been resolved and they are ready to come back to work at both papers."[33]

31. On September 25, 1962, the fifth day of hearing herein, there was a stoppage of work at the News; the *News* dated September 26, was not published. Apparently, there was no interruption of work or failure to publish at the Free Press. In view of the absence of surrounding details in this record, I have not relied upon this incident in arriving at any of the conclusions or recommendations contained in this report.

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[33] Credited testimony of Donald Schram.

D. Discussion and conclusions.

1. Independent interference, restraint, or coercion.

The complaint contained no allegations of, nor did any party at the hearing present evidence of, any interference, restraint, or coercion of employees' Section 7 rights independent of that which might be inferred from the alleged suspension agreement, the alleged lockouts of February, April, and May of 1962, and the publication of the double-masthead of April 15, 1962.

2. The suspension agreement.

The complaint alleges that, since November 2, 1961, the Free Press, the News, and the Association have performed, maintained, and given effect to an agreement, arrangement, understanding, and practice, relating to the hire, tenure or other conditions of employment of its employees, providing, *inter alia,* that either the Free Press or the News will suspend its newspaper publishing operations in the event that employees of the other publisher who are represented by a labor organization concertedly threaten to engage in or engage in a strike or work stoppage, or concertedly threaten to honor a picket line established by any labor organization of such publisher, or in any other manner concertedly threaten to engage in or engage in a failure or refusal to perform services. Stripped of legal niceties—as made clear by counsel for the General Counsel during the hearing—it is contended that the three Respondents were and are parties to a longstanding agreement that, if any of the publishers (including the Times, when it was in existence) should be hit by a strike or strike threat of any union, the other publisher(s) would, in support of the "target" publisher, suspend his (their) publishing operations in order to exert pressure on the moving union.

Complicated as was the sequence of occurrences described in the "Chronology of events," *supra,* such controversy as there was in that area concerned itself with more or less routine details. But on this issue—the existence of a suspension agreement—the parties had no common meeting ground. Counsel for the General Counsel vehemently argued that the existence of the pact was a matter of "public notice" among Detroiters and that, indeed—and this is my paraphrase—one of the difficulties, if any, or proof, arose out of the fact that the pact's existence was so well known that some difficulty is encountered in distinguishing between primary sources of information and common repute. The Respondents, on the other hand, deny that a suspension agreement exists; in effect, they say it is a figment of someone's imagination.

The evidence in support of, or in opposition to, the contention of the General Counsel took a number of forms.

Pertinent quotations appearing in the *Free Press* and the *News* over a period of years were introduced.

In the *News* of August 24, 1957, at the conclusion of the suspension of publication arising out of the News mailers' refusal to work overtime (see *Chron.* 3), there was a story covering the incident. The article noted that, after publishing double-mastheads on August 18, the Free Press and the Times had suspended publication "explaining that a strike against one newspaper is a strike against all three." Next morning, a news item on the same subject appearing in the *Free Press* attributed an announcement to the Association as of the previous Sunday, August 18: "An illegal shutdown against the Detroit News is forcing a shutdown of all three papers. . . . The [Association] makes contracts for the Detroit Free Press, News, and Times jointly. Under these joint contracts, a strike against one newspaper is a strike against all. . . . A group of News mailing room employees who

have no contract with any of the three papers threw a picket line around the News Saturday. . . . When the illegal strike continued Sunday, the [Association] had no choice but to suspend publication of all three daily papers."[34] On the same day, in a followup story, the News, in part, said, "The [Association] which negotiates and signs contracts with all the newspaper unions, explained that the walkout against one paper was a walkout against all."

On September 7, 1958, when Detroit's newspapers resumed publication after the 3-day interruption occasioned by the discharge of a *Free Press* Pressmen's chapel chairman for countermanding a foreman's order (*Chron.* 4), the *News* announced, in the course of its story of the interruption, "The position of the publishers was that this development at the Free Press was a work stoppage in violation of a joint contract with the three newspapers. . . . Publication of the *News* and *Times* thus was suspended Thursday morning."

On September 10, 1959, and September 11, 1959, respectively the *News* and the *Free Press* reported on the pressmen's Labor Day walkout at the *News* (*Chron.* 5). An excerpt from the News story: "All three Detroit newspapers operate under a joint contract with the union and a strike against one is regarded as a strike against all." And from the *Free Press*: "Publication of the *Times* and the *Free Press* was also stopped because the

[34] The Association, at the hearing, denied having made this announcement. Pursuant to a subpoena, the Association produced, from its files, an undated, unsigned "statement" which, the General Counsel argued, was the statement being quoted from. Butz, executive secretary of the Association, remembered having issued no such statement—indeed, denied that the alleged statement was an accurate statement of the facts. Since the document in question, otherwise unexplained, came from the Association's files and since its language remarkedly accords with that quoted by the *Free Press*, I find that it was in fact a statement of the Association.

three papers have a joint contract with Local 13 and a strike against one paper is considered a strike against all."

In August 1961 (see *Chron.* 7), an "outside" union close down the *Free Press* by its picketing. The *News,* which did not suspend operations, editorialized on August 22: "Under normal conditions—and because of joint contracting—a local dispute that closed one Detroit paper would automatically close both. But this time, the 'grievance,' if any, is in Miami, beyond the reach of joint action by the TWO Detroit Publishers. There is nothing anyone in Detroit can 'negotiate.' "

On May 11, 1962, at the conclusion of a month-long shutdown of both papers (*Chron.* 15-29), the *Free Press* reprinted, from the New York *Times* of May 8, an article by Arthur Krock (whose column does not normally appear in the *Free Press*) containing the following statements: "In Detroit, there have been seven shutdowns in 7 years. This time the Teamsters' Union struck the *Free Press.* Then, after an agreement was reached with management on a new contract, the International Typographical Union set up a picket line on the ground that its members had been locked out when the *News,* in conformity with a local publishers' agreement that a strike against one member was a strike against both, suspended publication. . . . The weakness of this, an agreement that a strike against one member is a strike against all, was again demonstrated in Detroit."

Testimony and stipulations established that another medium was also used by Respondent's to convey their message. On May 8, 1962—on which date there was a PPH picket line at the News and a cessation of publication at both papers (*Chron.* 26-28)—the publishers, at a cost of $1,127.10, caused the Krock column referred to above to read on 11 occasions over five Detroit area

radio stations,[35] each reading being accompanied by its identification as a paid advertisement of the Association.

There was some testimony that the fact of the existence of the suspension agreement was broadcast over certain Detroit television stations. Lacking either corroboration or details, I make no finding in this respect.

Testimony with respect to relevant statements by representatives of Respondents was also presented.

Most of these statements are attributed to Robert Butz, at all times relevant hereto executive secretary of the Association.[36] It was credibly testified, and I find, that, on a number of occasions, he told union representatives (usually in response to queries) that a strike against one newspaper would be a strike against all (when the Times was publishing) or both (after the demise of the Times), and that if one paper was struck the other(s) would close.[37] He made such statements in October 1958, in the course of contract negotiations between the Teamsters and the Free Press; during an arbitration proceeding with the Pressmen; and on other occasions.[38] On

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[35] One of which was owned by the News.

[36] The pleadings and credited testimony established, and I find, that Butz was principal spokesman for the Association and, as such, was authorized to speak on all labor relations matters, for both the Free Press and the News as well as the Association.

[37] Butz, conceding that the subject was frequently raised, denied that he gave the answer attributed to him. His answer, according to his testimony: "Wait and see," "Try it and see." or "That can't be answered until it happens." I considered him to be evasive on this point.

[38] I am aware that an inability to pinpoint dates—and witnesses did display such inability—detracts from probity. But their testimony was bolstered by Butz' admission that the subject was raised on many occasions. (Indeed, Respondents, in their brief, seem to accept the fact of the frequent raising of the question by alluding to it to press the point—involved in another aspect of this case, discussed *infra*—that, for example, the Teamsters, in negotiations with one publisher, repeatedly injected the subject of the other publisher.)

this record, I do *not* find that he made such statements after November 2, 1961; and I specifically find (see *Chron.* 9), contrary to the testimony of certain witnesses, that he did *not* make such statements on February 12, 1962.[39]

On May 9, 1962, over signatures of Lee Hills, vice-president and executive editor, and H. C. Weidler, business manager,[40] the Free Press sent its employees a letter to which was attached a reprint of the Krock column, above referred to. And, on May 10, 1962, Weidler "explained" to Guild President Schram (see *Chron.* 30) that the Free Press could not have resumed publication [2 days earlier] until the paper and plate handlers were ready to come back to work at *both* papers.

At or about October, 1958, in the course of negotiations with the Teamsters, Tade Walsh, circulation director of the Free Press,[41] said that if the Free Press were closed down, the News would close down.[42]

As noted in (*Chron.* 14), members of management of the Free Press and the News met to discuss their "common" problems *vis-a-vis* the Teamsters. James T. Dorris, the News' associate business manager in charge of labor relations,[43] memoralized for his superior an agreement reached between them: It was agreed between the two sets of management, that, should the Free Press be struck

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[39] Also, I do not place in the category of statements bearing upon the existence of a suspension agreement Butz' jocular answers to equally jocular queries such as, "How is the big publishers' union doing?"

[40] I find Hills and Weidler to be responsible agents of the Free Press.

[41] I find Walsh to be a responsible agent of the Free Press.

[42] Undenied by Walsh.

[43] I find Dorris to be a responsible agent of the News.

and unable to publish (because of a refusal to yield on certain points at issue), "the News would support the Free Press and would not publish"—a position which, it was further agreed, would not be communicated to the Teamsters.

Finally, as an aid in determining whether or not there was a suspension agreement, we must consider the conduct of the parties.

On every occasion but one during the past 6 years on which one of the two publishers has been hit by a picket line or a refusal to work, the other has suspended publication. There have been six such suspensions: In August 1957, when mailers picketed the News (*Chron.* 3); in September 1958, when pressmen refused to work at the Free Press (*Chron.* 4); in September 1959, when pressmen walked out at the News (*Chron.* 5); on February 14, 1962, when paper and plate handlers stopped working at the News (*Chron.* 11); from April 11-19, 1962, when the Teamsters picketed the Free Press (*Chron.* 15); and on May 8 and 9, 1962, when PPH picketed the News (*Chron.* 28). The sole such occasion on which there was no concomitant suspension was in August 1961, when a "foreign" local picketed the Free Press.[44]

On the basis of the facts above recited—the quotations from the publishers' newspapers,[45] statements made by

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[44] I note that, in their brief, Respondents list the 1953 pressmen's incident at the Free Press (see *Chron.* 1) as an "exception" to the practice of supporting. I agree that this incident either (1) militates against a finding of the existence of a suspension pact, or (2) demonstrates that no such past existed before the all-union strike of 1956-57 (see *Chron.* 2). I have duly considered this circumstance in arriving at my conclusions set forth below.

[45] Apparently, it is the position of Respondents that a newspaper is not responsible for what it publishes in its paper. Whatever its responsibility for statements on other matters. I regard

their representatives, and the history of suspension actions taken by the publishers—I find that, on and since November 2, 1961, the Free Press, the News, and their agent, the Association, have been and are parties to an agreement that, should either the Free Press or the News suffer a work stoppage because of employees' refusal to work or because of a picket line, the other would suspend its own publishing operations.[46] The sole limitations on the agreed action, I find, were that, where the subject of dispute was such that its resolution was outside the scope or authority of either the Free Press or the News,[47] or where the dispute was with a union which did not deal with *both* of the publishers,[48] there would be no supportive suspension.

I specifically find that the suspension agreement was not confined to *joint bargaining* situations. The evidence clearly establishes, and I find, that it was intended to apply

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a publisher in the absence of disclaimer, to be responsible for what it prints which bears upon its own policies.

On the other hand, in arriving at the conclusion above recited, I place no reliance on statements made in Mr. Krock's article, whether read over the air by the publishers, reprinted in the Free Press, or sent to its employees by the Free Press. A careful reading of the article demonstrates that Krock does not give as his source of information as to the suspension policy—"a strike against one is a strike against both"—the Respondents; he attributes it, rather, to the picketing union. Hence, it has no probative value as against Respondents.

[46] I reject Respondents' contention that the publication of double-mastheads in August 1957 (*Chron.* 3) and April 1962 (*Chron.* 18) negate the existence of the suspension agreement. While I would not necessarily find such publications to be violative of the Act—see *infra*—I regard such actions as corroborative rather than derogative of the arrangement.

[47] This limitation is established by the incident of "foreign" picketing in August 1961 (*Chron.* 7).

[48] In the absence of evidence to the contrary, I adopt Respondents' contention in this respect.

to situations in which the Teamsters[49] might strike one publisher or the other. In amplification thereof, it now appears necessary to discuss the relationship between the Teamsters and the respective publishers.

3. Teamsters' bargaining—joint or individual?

The Teamsters represent, for collective-bargaining purposes employees generally engaged in the distribution of six newspapers published in the Detroit metropolitan area. The *Free Press* and the *News*, whose publishers employ, respectively, 450 and 600 members of the Teamsters, are by far the largest of these newspapers.

The Free Press and the News, principally because they are distributed at different times of the day, each has its own peculiar distribution problems. Their distributive employees, although engaged in discharging the same basic function, perform different specific duties. For example, at one paper, distribution is made to substations, from which further distribution is made by others; at the other, the distributive employees service stands and boxes and supply various retail outlets, as well as make deliveries to carriers' homes. At one paper, distribution—by these employees—is limited to the so-called city zone; at the other, it is not. And, although it is apparent that some of them

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[49] Although I find that the suspension agreement applied also to strike action by PPH, I reject the General Counsel's contention that the publishers dealt individually rather than jointly with PPH. All the criteria of joint bargaining are present in this relationship: joint negotiations, single multiemployer contract, etc. The sole basis for the General Counsel's claim is that PPH made a timely demand for individual bargaining. However, the demand was rejected, and, thereafter, both the trappings and the spirit of joint bargaining were adhered to. An agreement to arbitrate the terms of a new (joint) contract was consummated (*Chron.* 12), which agreement was subsequently relied on by PPH as supportive of action taken against the News (*Chron.* 26).

are overlapping, one publisher has 14 jobs classifications, the other 18.[50]

The Teamsters have represented such employees at both newspapers for at least 20 years.[51]

During this period, the working conditions of the employees have been crystallized in 2-year collective bargaining agreements—one for each publisher—usually expiring in November of the odd years. As far as this record reveals, the tenures of all past contracts, with either publisher have been identical.

(The last such contracts were effective, by their terms, until November 15, 1961, unless automatically renewed. In each case, the Teamsters gave timely notice of a desire to negotiate a new contract with changes. In each case, the Teamsters rejected a request for an indefinite extension of the contract pending negotiations, subject to a 5-day notice of termination; and in each case, as I have found, the terms of the 1959-1961 contracts were continued on a day-to-day basis.)

Contract negotiations are conducted[52] between the Teamsters and each publisher separately. Contract proposals are exchanged between the Teamsters and each publisher, copies normally being sent to Butz, the Association's ex-

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[50] This is based upon testimony given at the hearing. Examination of the last expired contracts reveals that, at that time, the respective figures were 12 and 19, but the deviation is immaterial herein.

[51] There have been no relevant Board representation cases in the past.

[52] Although I use the present tense here, I mean by my description (unless I specifically indicate the contrary) to cover circumstances extant at all relevant times. Witnesses' testimony and counsel's arguments interchangeably described existing and past conditions. Apparently, they recognized, and I find, that these descriptions covered the entire relevant period.

ecutive secretary. The Teamsters and each publisher meet separately, although their meetings with the two publishers often "leapfrog" each other[53] Normally present at each meeting are representatives of the publisher whose contract is being discussed, Butz, the Association executive secretary, and a Teamsters' negotiating committee consisting of employees and stewards employed by the affected newspaper and the local's executive board, consisting of its officers. The personnel normally common to both sets of meetings are Butz and O'Connor and Prebenda, respectively president and secretary-treasurer of the Teamsters.

(On perhaps six instances in the past 20 years the "other" paper has had observers present at a negotiating meeting between the Teamsters and a publisher; on the last occasion—in September 1958—union committee requested their withdrawal; the request was honored, and there has been no recurrence. On one occasion, the Teamsters asked Butz to withdraw, but this request was refused; and, as indicated, he continued to attend. On a number of occasions—notably, the last few meetings between the Teamsters and the Free Press prior to the April 1962 strike—the Teamsters have been represented by O'Connor and/or Prebenda alone.

(On April 18, 1962—see *Chron.*, 20—at the "mediation-negotiation meeting" held at Commissioner Edwards' office, both publishers were present and both contracts were discussed. But the publishers were separated from the Teamsters, and the contracts were discussed seriatim rather than simultaneously. On the other hand, there is no doubt, and I find, that the publishers, themselves, discussed the issues they regarded as common.)

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[53] Indeed, during the same period, the publishers, or either of them, may be conducting meetings with other of their employees' unions.

At these meetings, the main spokesmen for the publisher involved are the publisher's direct representatives, in contradistinction from those negotiations between the publishers and other unions, wherein Butz is the main spokesman for the publishers.

During the course of this process, insofar as the Teamsters are concerned, the progress of negotiations with a publisher is reported to and discussed with the employees of that particular publisher. Thus, the Teamsters, internally, is divided into a number of "units" composed of the respective employees of each publisher. The Free Press unit interests itself in negotiations with the Free Press; the News unit in negotiations with the News; and, similarly, there are units interested in negotiations with other employers.

Meanwhile, back at the publishers . . . Butz keeps either the Free Press or the News informed as to the state of negotiations between the Teamsters and the other paper. And occasionally—for an outstanding instance, see *Chron.* 14—representatives of the two publishers meet together, with Butz, to discuss what they consider to be common issues.

When tentative agreement is reached between the Teamsters and a publisher, it is presented to that publisher's unit within the Teamsters, and this unit ratifies or rejects the agreement. The finished, executed contract, as indicated, is separate from that of the other publisher.

(The dates of execution of the Free Press and the News' contracts have usually been identical since 1953. This was not true of the 1957-1959 contracts nor was it true of the 1961-1963 contracts—see *Chron.* 20.)

The contracts are separately administered, and grievances unsettled earlier are handled by a Joint Standing

Committee. The Committee, a separate one under each contract, consists of three members appointed by the publisher involved and three members appointed by the Teamsters—in actuality, by the Teamsters' unit involved. (Butz represents the affected publisher on each Committee.) A grievance which cannot be adjusted by the Committee in the first instance is, in effect, arbitrated, since there is provision for the addition of a seventh member, on an *ad hoc* basis, to break the tie.

Much of this hearing was devoted to testimony and arguments intended to showing similarities and dissimilarities, and consistencies and inconsistencies, with respect to collective-bargaining issues both as contained in the last complete contracts between the Teamsters and the publishers and as contained in the various proposals of the parties in the latest negotiations for new contracts. Having given the evidence, both testimonial and documentary, full consideration, I find (for what it is worth) that there are similarities, dissimilarities, consistencies, and inconsistencies.[54] On the other hand, I find that there are perceptibly no more or less of these than might normally be found in collective-bargaining relationships between a union and two employers in the same industry who have many similar and some distinctive problems. I accept the contention of the General Counsel that one might expect a substantially common approach by a union dealing with such employers; going further, the fact that such employers might seek to take a common approach toward the union does not startle me.

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[54] I confess myself somewhat confused as to the meaning of "inconsistencies" as used by the parties. For example, the 1961-1963 Teamsters contract of one of the publishers calls for the hiring of union members only, then requires *application for membership* after 2 weeks; the other calls for the hiring of union members only if and when such a provision shall become lawful, and goes on to require union membership after 31 days. I assume all parties would term this both a dissimilarity and an inconsistency."

(The basic wage rates for similar Teamsters employees of the two publishers are essentially similar, although their apportionment to a "package" differs slightly. [The increases sought in the most recent negotiations were the same; but they generally accorded with those sought by and granted to employees represented by other unions.] One publisher had a pension plan earlier than the other; now both have such plans, administered by separate boards.)

In resolving the question at hand, I would be inclined to give some weight to the opinions of the parties themselves as to the type of bargaining they were engaging in. I am handicapped in this respect by the fact that, until the question at hand arose, the subject received little attention from the parties. As I see it, they never discussed it. But, quite frankly, I believe that even the publishers regarded themselves as bargaining individually. In the *Free Press* of January 17, 1956, under the byline of William Chapman, assistant city editor, a news article recited that the "[Guild], [Photo Engravers], and [Teamsters]—representing newspaper truckdrivers—negotiate separately with each newspaper," a statement never corrected. And, at this hearing, James T. Dorris, associate business manager of the Free Press, in charge of labor relations there since mid-1956, testified on cross-examination that it was not his position that the publishers bargained jointly with the Teamsters. (On redirect, he said he meant that the publishers would not sit down with the Teamsters in the same room.) I have no evidence of the Teamsters' past feelings on the matter.[55]

On balance, the total picture of negotiations, based on the credited testimony, convinces me, and I find, that the

[55] Because it would beg the question, I place no reliance, in this respect, on Teamsters' threats, past or present, to strike one newspaper and not the other; as equally question-begging, I do not rely on Butz' reaction—to close down both papers if one was struck.

Teamsters bargained individually with each of the publishers.

4. Concluding findings on the suspension agreement.

Having found that Respondents were and are parties to an agreement that one publisher suspend publication in support of the other faced by strike or picket line, having found that the agreement encompassed situations involving strikes or picketing by the Teamsters, and having found that the Teamsters bargain individually rather than jointly with the publishers, I find that the breadth of the suspension agreement renders it violative of Section 8(a)(1) of the Act.

The Board has held that, absent special circumstances, an employer may not, during bargaining negotiations, either threaten to lock out or lock out his employees in aid of his bargaining position. Such conduct, the Board has held, presumptively infringes upon the collective-bargaining rights of employees, and the lockout amounts to discrimination.[56]

The passing years have shed light on the meaning of the phrase "special circumstances." The Supreme Court has determined, in the so-called *Buffalo Linen* case,[57] that an employer may lock out his employees as a defensive measure to protect the integrity of a multiemployer bargaining unit against "whipsawing" by a union. Likewise, a lockout is permissible where hardship renders it economically unfeasible for an employer to maintain

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[56] *American Brake Shoe Company*, 116 NLRB 820, set aside 244 F. 2d 489 (C. A. 7), finding special circumstances, contrary to Board determination.

[57] *N. L. R. B. v. Teamsters* 449, 353 U. S. 87.

operations in the face of an imminent strike.[58] And I would assume, *a fortiori,* that an advance intention, or agreement between affected employers, to implement these rights would not be unlawful. Moreover, it has been specifically held that advance agreement to suspend operations in the event of a series of unauthorized work stoppages is not violative of the Act.[59]

It has never been held that the right to lock out employees is necessarily a corollary of employees' right to strike which is guaranteed by Section 7 of the Act.[60] And where it has been found that a lockout was motivated by a desire to defeat employees' organizational or otherwise protected activities, a violation has been found.[61]

Respondents argue for an extension of the *Buffalo Linen* doctrine to cover a lockout by employees over *common issues.* They argue that to confine the principle—to the protection of a multiemployer unit—would be to take a "mechanical, wooden approach" to the problem. They urge the logic of the *Buffalo Linen* case equally applies to this situation, as it affects the Teamsters.

As I see it, *Buffalo Linen,* among other things, adjures the Board to weigh the conflicting interests of employee

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[58] *Betts Cadillac Olds, Inc.,* 96 NLRB 268 (inability to assure customers of completion of work); *Duluth Bottling Assn.,* 48 NLRB 1335 (spoilage of materials); *International Shoe Company,* 93 NLRB 907 (operative difficulties in running plant in fact of partial strike among integrated departments).

[59] *Publishers' Association of New York City, et al.,* 139 NLRB No. 107.

[60] The Supreme Court, in *Buffalo Linen, supra,* specifically refrained from passing upon this question.

[61] *N. L. R. B. v. Somerset Classics,* 193 F. 2d 613 (C. A. 2), cert. denied 344 U. S. 816; *N. L. R. B. v. Wallick and Schwalm,* 198 F. 2d 477 (C. A. 3); *Olin Industries v. N. L. R. B.,* 191 F. 2d 613 (C. A. 5), cert. denied 343 U. S. 919.

and employer in determining to what extent the right to lock out may infringe upon the right to strike. I agree that a wooden, mechanical approach may not be used; the test, as I see it, is whether special circumstances favoring a suspension of business operations outweigh the statutory right to strike.

Whatever may the case with respect to the instant suspension agreement as it might have been directed toward preserving the integrity of a multiemployer unit, I see no special circumstances justifying its extension to cover, as it did here, single-unit Teamsters' disputes. I do not believe that the reasoning of *Buffalo Linen* was intended to cover, or should cover, cases of *Common issues.* Farflung employers in the same industry have common issues; diverse employers in an area have common issues. To permit supportive lockouts over common issues would, in my opinion, be a serious and unwarranted restraint upon the right to strike.[62]

For these reasons, as indicated, I find the Respondents' suspension agreement to extend beyond the lowful limits of Section 8(a)(1) of the Act and, therefore, to constitute a violation of Section 8 (a) (1).

In so finding, I do not adopt or use the contention made by General Counsel, in asserted reliance on *Buffalo Linen,* that Respondents' actions were unlawful in view of their relative superiority—size-wise—over the unions involved. Even if this were part of the Supreme Court's reasoning—and I am sure that the Court was not merely citing an example of the type of situation which might arise rather

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[62] I note that the Board refused to extend the *Buffalo Linen* principle to a situation wherein, although the unit throughout which the lockout was extended was a multiemployer unit, the reason for the lockout was something other than protection of the integrity of the unit. *Anchorage Business Association, Drug Store Unit,* 124 NLRB 662, 668-9.

than a factor upon which it would rely[63]—the facts in this record do not support the General Counsel's contention.

Respondents argue, finally, that, even if there was a suspension agreement, there was no violation of law absent implementation. Assuming no implementation (but see "the 1962 suspensions," *infra*), there was *communication.* All of the evidence which persuaded me that such an agreement existed,[64] with the possible exception of that relating to Mr. Dorris' memorandum to his superior, constituted evidence of publication of the fact as well. Clearly, implemented or not, a suspension agreement as described above made known to employees, tends to inhibit them in the exercise of their Section 7 rights.

One other item deserves mention. I do not rely, in arriving either at the above conclusions or at the conclusions reached in "The 1962 suspensions," *infra;* upon the factor of strike insurance. Having given the matter careful consideration, I do not regard the existence of strike benefits for the employees—as persuasive one way or the other.

5. The 1962 suspensions.

The General Counsel alleges that, pursuant to their suspension pact, the Free Press and the News engaged in a number of suspensions of publication in violation of Section 8 (a) (1) and (3) of the Act. Alternatively, he urges that, even absent a suspension agreement, these suspensions constituted 8(a)(1) and (3) violations. The suspensions in question are the Free Press suspension of February 15, 1962 (see *Chron.* 11); the News suspension of April 12-14, 1962 (see *Chron.* 17); the News suspension of April

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[63] See *Buffalo Linen, supra,* page 96.

[64] See "The suspension agreement," *supra.*

16-19, 1962 (see *Chron.* 19-21); and the Free Press suspension of May 8 and 9, 1962 (see *Chron.* 28).

I find that the Free Press suspended publication of its February 15, 1962, issue (which would have been printed February 14) pursuant to the suspension agreement which I have heretofore found to have been in existence. This however, is not dispositive of the matter. For, on two basic grounds, I perceive no violation of law in this failure to publish by the Free Press.

(1) The suspension arose out of an interruption of work at the News brought about by a "meeting" of paper and plate handlers. This meeting was the sixth of a series of such interruptions, at both the News and the Free Press, within a period of 8 days. The interruptions were the subject of a telepgraphic protest, on behalf of both papers, by the Association on February 12. Moreover, it can be fairly inferred, from PPH international action of February 12 (*Chron.* 9), that the meetings were unauthorized if not unlawful. Finally, as I have found, the cause of the February 14 shutdown at the News was the paper and plate handlers' dissatisfaction with or efforts to influence the contract negotiations then being jointly conducted with the publishers.

If from no other viewpoint, Respondents were justified in taking their action to preserve the unit bargaining, in accordance with the *Buffalo Linen* principle.

(2) Finally, there was no loss of employment. I gather that the General Counsel would have me conclude that, even though no employment is immediately lost, a suspension of newspaper publication results in community pressure on the striking union to end the strike. I do not deem it necessary to pass upon this "conclusion" as it might be affected by long-lasting periods of publication-suspension; in this instance, I do not find the nature and degree of

the suspension, if it constitutes discrimination, to have a tendency to or be likely to discourage union membership.[65]

For reason (1) given above, I find no violation in the May 8 and 9 suspension of the Free Press.

(As noted above, the General Counsel urges that these suspensions, as well as others, were effectuated pursuant to the suspension agreement which I have heretofore found unlawful; therefore, it might be argued, however they might be justified standing alone, they are unlawful as the fruit of an unlawful pact. The short answer to this is, to the extent that they resulted from the suspension agreement, it was from that part of the agreement which, if standing alone, I would have found to be lawful. I shall find no violation, as such, in these acts.)

Likewise, I find no violation with respect to the News' suspension of April 12-14, but only for reason (2) above; as far as this record reveals, there was no loss of employment or wages.

I reach a different result with respect to the News' suspension of April 16-19. For reasons set forth in "Concluding findings on the suspension agreement," *supra*, I find that the suspension of publication by the News during this period interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act; and that, in addition, the loss of employment occasioned by the second suspension, constituted discrimination which discouraged union membership.

(I find that the News took this action pursuant to the suspension agreement between Respondent and that, therefore, the suspension of April 16-19, 1962, constituted a violation of 8(a)(1) and 8(a)(3); but that even if there

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[65] *Publishers' Association of New York City, supra,* Intermediate Report, page 20, as approved by the Board on broader grounds.

were no proof of such agreement, the suspension would be unlawful on the part of the News alone.)

6. The double-masthead of April 16, 1962.

Counsel for the General Counsel urges that the News' publication of the double-masthead on April 15, 1962 (see *Chron.* 17) violated Section 8(a)(1) of the Act since it constituted an attempt to provoke a strike at the News, thus either avoiding the necessity of a lockout there or furnishing a pretext for such lockout.

The issuance of the double-masthead undoubtedly assisted, and was designed to assist, the Free Press, which was then beset by a Teamsters picket line; undoubtedly, also, it constituted the performance of struck work. Moreover, its preparation necessitated the crossing of a picket line by employees who were members of the picketing union.

On the other hand, Respondent News put forward a logical, non-union-connected, reason for, the event: the fact that Easter Sunday fell 1 week later—a newspaper-less week in which merchants would anticipate substantial shopping. As for the anticipated reprisals to cross a picket line, the News had no more reason to believe that there would be "trouble" than there had been in connection with the 1957 double-mastheads (see *Chron.* 3).[66]

Except for lockout action, I know of no precedents for finding unlawful any action taken by one employer in support of a struck employer, and I find no violation here.

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[66] The witness Thiel testified that, sometime in 1960, Butz had conceded to him that the 1957 mastheads were designed to "trap" the union into extending its picket line to all newspapers, thus obviating the necessity for supportive lockouts. Butz, testifying, denied making the statement. Thiel's testimony did not have the ring of truth; in my opinion, the statements attributed to Butz were quite out of character with his dealings with unions, as displayed at this hearing. I credit the denial.

IV. The Effect of the Unfair Labor Practices Upon Commerce.

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy.

Having found that Respondents have engaged in certain unfair labor practices, I shall recommend that they be ordered to cease and desist therefrom and to take certain affirmative action in order to effectuate the policies of the Act.

Having found that Respondents violated Section 8(a)(1) by being parties to an agreement which unduly interferes with, restrains, and coerces employees in the exercise of their Section 7 rights, I shall recommend that they cease giving effect to any such agreement. Also, having found that, pursuant to such agreement, they discriminated with respect to the tenure of certain employees from April 16-19, 1962, inclusive, I shall recommend that, jointly and severally, they make these employees whole for the loss of employment suffered by them because of the discrimination, by payment to each of them of a sum of money equal to the amount he would have earned during the period of such loss.[67] Backpay shall include

[67] I have heretofore found that the discrimination occurred pursuant to the suspension agreement mentioned above; hence, the joint and several obligation. I have earlier indicated that I regarded the suspension of April 16-19 to have been violative of Section 8(a)(1) and (3) on the part of the Respondent News even if it had not been pursuant to the agreement; in such case, I would have recommended imposition of the backpay obligation on the News, only.

interest at the rate of 6 percent per annum computed quarterly.

As the unfair labor practices committed by Respondent are of a character striking at the roots of employee rights safeguarded by the Act, I shall also recommend that Respondents cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the foregoing factual findings and conclusions and upon the entire record in this case, I make the following:

Conclusions of Law.

1. The Free Press and the News are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and the Association is their agent.

2. PPH, the Pressmen, the Photo-Engravers, the Stereotypers, the Mailers, the Teamsters, the Guild, the IBEW, the ITU, the Engineers, the Machinists, the Mechanics, the Building Service Employees, and the Carpenters are labor organizations within the meaning of the Act.

3. By discriminating in regard to the tenure of employment of certain employees from April 16, 1962, to April 19, 1962, inclusive, to inhibit the right of employees to strike, Respondents Free Press, News, and Association engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

4. By the foregoing conduct; and by entering into, maintaining, and enforcing an agreement whereunder, if either the Free Press or the News suffer a work stoppage because of employees refusal to work or because of a picket line (the sole limitations of which agreement are that it does not apply to disputes and resolutions of which is outside the scope or authority of either publisher and that it does not apply to a dispute with a union which

does not deal with both publishers), the other will suspend its own operations—Respondents have interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8(a)(1) thereof.

5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

6. Except for the above, Respondents have not engaged in unfair labor practices as alleged in the complaint herein.

RECOMMENDED ORDER.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that

I. Knight Newspapers, Inc., publisher of the Detroit *Free Press,* and Evening News Association, publishers of the Detroit *News,* their officers, agents, successors, and assigns, shall:

A. Cease and desist from:

(1) Discouraging membership in any labor organization of their employees by discriminating in regard to tenure of employment.

(2) Entering into, maintaining, enforcing, or renewing any agreement or understanding whereunder, if either of them suffer a work stoppage because of employees' refusal to work or because of a picket line (the sole limitations of which agreement are that it does not apply to disputes the resolution of which is outside the scope of authority of either publisher and that it does not apply to a dispute with a union which does not deal with both publishers), the other will suspend its own operations.

(3) In any other manner, interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities.

B. Take the following affirmative action, which I find will effectuate the policies of the Act:

(1) Jointly and severally, with each other and with Detroit Newspaper Publishers Association, make whole those employees of Evening News Association who lost employment from April 16, 1962, to April 19, 1962, inclusive, for any loss of earnings suffered by reason of the discrimination against them, in the manner set forth in the section above entitled "the remedy."

(2) Preserve and make available to the Board or its agents, upon request, for examination and copying, all payroll records, social security payment records, timecards, and personnel records and reports necessary to analyze the amount of backpay due.

(3) Each post at its plant in Detroit, Michigan, copies of its respective notice attached hereto as Appendices A and B.[68] Copies of such notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by an authorized representative of the respective Respondents, be posted immediately upon re-

[68] If these Recommendations are adopted by the Board, the words "A Decision and Order" shall be substituted for the words "The Recommendations of a Trial Examiner" in each notice. If the Board's Order is enforced by a decree of the United States Court of Appeals, each notice will be further amended by the substitution of the words "A Decree of the United States Court of Appeals Enforcing an Order" for the words "A Decision and Order."

ceipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that such notices are not altered, defaced, or covered by any other material.

(4) Notify the Regional Director for the Seventh Region, in writing, within 20 days from the date of the receipt of this Intermediate Report what steps the Respondent has taken to comply herewith.[69]

II. Detroit Newspaper Publishers Association, its officers, agents, successors, and assigns, shall:

A. Cease and desist from:

(1) Discouraging membership in any labor organization of its members' employees by discriminating in regard to tenure of employment.

(2) Entering into, maintaining, enforcing, or renewing any agreement or understanding whereunder, if either of its members suffer a work stoppage because of employees' refusal to work or because of a picket line (the sole limitations of which agreement are that it does not apply to disputes the resolution of which is outside the scope or authority of either member and that it does not apply to a dispute with a union which does not deal with both members), the other will suspend its own operations.

(3) In any other manner, interfering with, restraining, or coercing its members' employees in the exercise of their right to self-organization, to form labor organiza-

[69] If these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Seventh Region, in writing within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

tions, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any and all such activities.

B. Take the following affirmative action, which I find will effectuate the policies of the Act:

(1) Jointly and severally with Knight Newspapers, Inc., and Evening News Association, make whole those employees of Evening News Association who lost employment from April 16, 1962, to April 19, 1962, inclusive, for any loss of earnings suffered by reason of the discrimination against them, in the manner set forth in the section above entitled "the Remedy."

(2) Notify the Regional Director for the Seventh Region, in writing, within 20 days from the date of the receipt of this Intermediate Report what steps the Respondent has taken to comply herewith.[70]

It is further recommended that the complaint be dismissed insofar as it alleges that Respondents engaged in other conduct (the *Free Press* suspension of operations on February 14, 1962; the *News* suspension of April 12-14, 1962; the "double-masthead" of April 15, 1962; and the *Free Press* suspension of May 8 and 9, 1962) violative of the National Labor Relations Act.

Dated at Washington, D. C.

Harold X. Summers,
Trial Examiner.

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[70] If the Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Seventh Region, in writing within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX "H".

Statutes Involved.

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U. S. C., Sec. 151 et seq.):

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

Sec. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

Section 203—

. . . . . .

(c) If the Director is not able to bring the parties to agreement by conciliation within a reason-

able time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1267

NEWSPAPER DRIVERS & HANDLERS' LOCAL UNION NO. 372, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, IND., PETITIONER

-vs-

NATIONAL LABOR RELATIONS BOARD, DETROIT NEWSPAPER PUBLISHERS ASSOCIATION, EVENING NEWS ASSOCIATION, Owner and Publisher of The Detroit News, and KNIGHT NEWSPAPERS, INC., Owner and Publisher of The Detroit Free Press, RESPONDENTS

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION

This Brief is filed on behalf of Respondents, Detroit Newspaper Publishers Association ("Association"), Evening News Association, owner and publisher of The Detroit News ("the News"), and Knight Newspapers, Inc., owner and publisher of The Detroit Free Press ("the Free Press"), in opposition to the Petition for a Writ of Certiorari by Newspaper Drivers & Handlers' Local Union No. 372, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind. ("Local 372"). Respondent, the National Labor Relations Board, will be referred to herein as "the Board".

QUESTION PRESENTED

The Questions presented by Petitioner are unacceptable (Pet. 3).[1] Both questions disregard the express findings of the Board and are premised on contentions rejected by the Board and the Court below. The sole question posed by this case is the following:

> Whether Respondent, the News, under threat of strike and after a bargaining impasse had been reached, violated Sections 8(a)(1) and (3) of the Act[2] by temporarily shutting down its operations and laying off its employees to bring economic pressure to bear in support of its own legitimate bargaining position?

This question was decided adversely to the Petitioner by the Board and Court below.

STATEMENT

This was a Section 8(a)(1) and (3) charge under the National Labor Relations Act, involving alleged misconduct by Respondents during the course of bargaining in 1961-1962 with 14 unions for 21 different contracts (A-10, 52).[3] Good faith bargaining under Section 8(a)(5) was not an issue. Likewise conceded was the absence of any evidence of interference, restraint or coercion of employees' Section 7 rights independent of the temporary layoff by the News. (A-30, 72).

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[1] "Pet." refers to the Petition for a Writ of Certiorari filed herein and to the page number thereof.

[2] National Labor Relations Act, as amended (herein referred to as "the Act"); § 8(a), 61 Stat. 140, 29 U.S.C. § 158(a) (1958 ed.); cf Appendix H to Petition, A-99.

[3] "A-" refers to Petitioner's Appendix and the page number thereof.

After six years of litigation and review[4], only one issue remains (A-9, 14). This involves the propriety of a four-day temporary layoff or lockout by the News occasioned by its bargaining with Local 372 for a new contract. After remand by this Court, the Board, applying *American Ship Building*[5] as directed by the mandate, found that the News' conduct did not violate Sections 8(a)(1) and (3). This finding was affirmed by the Court below.

The News and Free Press, the only large daily Detroit newspapers, bargain concurrently for new contracts with numerous unions representing employees of one or both newspapers. They are the only members of the Association which handles their labor relations. Most such bargaining is on a multi-employer basis but Local 372 has bargained separately for the more than 20 years that it has represented distribution employees of both papers. Local 372's members perform substantially similar functions at both papers and have historically expected and received similar economic treatment in their contracts. Common to the bargaining for both contracts are the two full-time officers of Local 372 and the Association Secretary. The latter informs each Publisher of the progress of bargaining with the other and the Publishers themselves, on occasion, meet to discuss common issues. (A-10, 26, 27, 37).

The instant dispute commenced in October, 1961 with notification by Local 372 to both papers of its desire to

[4]Trial Examiner's Intermediate Report (1963) (Pet. App. G, A 45-98); *Detroit Newspaper Publishers Assn., et al*, 145 NLRB 996 (1964) (Pet. App. G, A 33-44); enforcement denied, *Detroit Newspaper Publishers Assn. v. NLRB*, 346 F. 2d 527 (1965) (Pet. App. F, A 25-32); vacated and remanded *sub nom Newspaper Drivers & Handlers v. Detroit Newspaper Publishers Assn.*, 382 U.S. 374 (1966) (Pet. App. E, A 24); Supplemental Decision and Order, 166 NLRB No. 6 (1967) (Pet. App. B, A 9-21); petition for review denied *sub nom Newspaper Drivers & Handlers v. NLRB*, 404 F. 2d 1159 (1968) (Pet. App. A, A 1-8).

[5]*American Ship Building Co. v. NLRB*, 380 U.S. 300 (1965).

reopen the contracts expiring on November 15, 1961 (A-10, 11). Prior to expiration, Local 372 also gave requisite notice to state and federal mediation to clear the decks for strike action against both papers under Section 8(d)(2) and (4) of the Act. Subsequently, Local 372 rejected a request by Respondents for an extension of the old contracts during bargaining. In December, 1961, after the contracts had expired, Local 372's members gave their negotiating committees strike authority at both papers, which fact was communicated to Respondents (A-18, 60).

Free Press bargaining with Local 372 proceeded normally between October, 1961 and April, 1962 (A-10, 11, 26). On April 6, 1962, Local 372 presented proposals to the Free Press and advised that strike action would result on April 11 if a satisfactory offer were not received by that date. On April 11, the Free Press submitted its "last best offer", which was rejected by Local 372, and a picket line was established at the Free Press that afternoon without further notice to the Publisher. This forced immediate suspension of publication by the Free Press. Petitioner concedes these circumstances created an impasse at the Free Press (Pet. 4).

Petitioner largely neglects the progress of bargaining (or, more accurately, the lack thereof) at the News prior to the impasse and lockout. Commencing in October, 1961 and continuing until January 11, 1962, the bargaining proceeded normally. After January 11, 1962, Local 372 refused to bargain further with the News despite repeated requests (A-11, 16, 27, 60). Except for one abortive session on March 22, at which Local 372 promised to submit contract proposals, there was no further bargaining with the News until after the strike at the Free Press on April 11.

After the Free Press had received its strike ultimatum, the News and Free Press met on April 9 to discuss union demands of common interest (A-11, 12, 27). The News,

after reviewing the common issues remaining, concluded that three such issues were of vital importance to its own bargaining with Local 372 (A-8, 11). The News stated that if the Free Press were struck over these three demands the News would not publish. It is important to note that the News position was that it would cease publication. There was no statement or undertaking by it to lock out its employees. That decision, made by the News unilaterally, was not reached until April 15.

April 12, the morning after the Free Press strike, the News received the proposals which Local 372 had promised on March 22 (A-11). These contained the identical three key demands made of the Free Press (A-4, 8, 12). This was prior to any suspension of publication or lockout by the News. The News thereafter suspended publication but its employees reported for work and were paid (A-12).

Following the suspension of publication, Local 372's International President, Mr. Hoffa, took charge of the negotiations and scheduled meetings through the Association with both papers (A-12, 27-28, 64). In this connection he informed the Association Secretary that (A-3, 12):

> "The News had better be present . . . because the issues at the News would have to be settled or *they'd be on strike also.*"

On April 14, following a Free Press session which resulted in no progress, Mr. Hoffa met with the News. At the conclusion of that meeting, Hoffa announced that he would take the "company's last proposal" (a proposal made four months before in December, 1961) to the membership despite protests by the News that this was not their last or best proposal and that they were willing to continue negotiations. Hoffa's reply was to the effect that "regardless of whether it is the best proposal . . . this is your final best offer and it is going to be submitted to the union" (A-12, 13, 16). Since Local 372 had already rejected

an even better offer from the Free Press, similar rejection of this old offer was a foregone conclusion. No further meetings were scheduled. Confronted with this situation, the News on April 15 decided to temporarily lay off its employees commencing April 16, and they were notified accordingly (A-12, 27).

One of many misstatements by Petitioner is that following the April 14 meetings, negotiations were "recessed" until April 18 (Pet. 6). There was no "recess". As noted above, Mr. Hoffa refused to continue negotiations and no further meetings were scheduled. What did take place is undisputed. On April 16, Respondents proposed to Hoffa mediation by *a third party of his choice* (R. Vol. V—1000a).[6] The next day the parties agreed to mediation which resulted in an agreement settling the critical issues, thus ending the strike and lockout on April 19, 1962 (A-3, 13-14).[7]

ARGUMENT

The Petition is based in its entirety on two assumptions of fact which are contrary to the express findings of the Board, affirmed by the Court of Appeals. Petitioner's

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[6] Reference is to Record below, the volume number and the page thereof.

[7] Another misstatement is that, although Local 372 was able to strike the Free Press, its agreement with the News prohibited strike action, and required arbitration of all unresolved issues (Pet. 5). This contention has been considered by the Board and the Court below both before and after remand. It has been rejected every time. The short answer lies in Local 372's own actions which were at variance with any such claim. Prior to expiration of the old News contracts, requisite notice was given by Local 372 to permit strike action, the contract was allowed to expire and Local 372 refused the News' request to extend it during bargaining. Local 372's members voted overwhelmingly to strike the News and Mr. Hoffa specifically threatened the News with a strike. At no time during negotiations with the News was mention made by Local 372 of arbitration.

approach accordingly violates the basic precepts for review of Board decisions, long since firmly established by this Court. These precepts are particularly applicable to the instant case which has been the subject of repeated review by the Board, by the Court of Appeals and by this Court over the past six years.

The full Board, in obedience to the mandate of this Court, reconsidered the issues in the light of *American Ship Building*, made its findings and dismissed the complaint. The Court below affirmed these findings of the full Board and denied Local 372's petition for review. Despite this, Petitioner continues its attack on such findings in this Court.

It is elementary that the weighing of conflicting evidence is for the Board and not for the courts, that the inferences to be drawn from the evidence are to be drawn by the Board, and not by the courts, and that the Board's findings are conclusive when supported by substantial evidence. *Medo Corp. v. NLRB*, 321 U.S. 678, 681; *Universal Camera Corp. v. NLRB*, 340 U.S. 474. It is equally clear that the determination whether there is substantial evidence to support such findings is a question for the Courts of Appeal and not for this Court except in rare instances. *Universal Camera*, cited, at 491. Petitioner likewise ignores another basic precept which this Court has made plain, i.e., that the Board's judgment or expertise should rarely be disturbed. *NLRB v. United Insurance Co.*, 390 U.S. 254, 260; *NLRB v. Truck Driver's Local 445* (Buffalo Linen), 353 U.S. 87,96.

Petitioner's first false assumption is that the temporary layoff occurred "prior to an impasse in bargaining" (Pet. 3) and the Petition proceeds "on the basis that there was no impasse between the News and Local 372" (Pet. 9).

The Board's finding, in the circumstances of this particular case, was that, prior to the lockout, both the News

and Local 372 "viewed their negotiations as being *deadlocked* on key issues, and that neither doubted that a work stoppage would be required to break the *deadlock*" (A-16). In affirming this finding, the Court below correctly observed that "the words 'deadlock' and 'impasse' are synonymous" (A-2).[8]

Petitioner's second false assumption is that the purpose of the lockout was "to bring pressure upon employees of another employer (The Free Press) who are on strike" (Pet. 3).

Again, the Board's finding is diametrically opposed. After reviewing the essential facts, it found that "The interest of the News in using economic pressure to implement its own bargaining was thus grounded upon *a very real, direct and immediate bargaining motivation in its own behalf*" (A-18). This finding, fully supported by the record, was likewise affirmed (A-4).

The Board and the Court below were clearly correct in their application of *American Ship Building* to this case. All of the critical factors present in that case were present here—if anything in greater degree. As the Board said (A-17, 18):

"We are convinced that the circumstances of this

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[8] As respects the prior position of the parties on the question of impasse, the Petition is equally incorrect. It is claimed that all parties in the original proceedings took the position that there was no impasse between Local 372 and the News (Pet. 8). The fact is that the parties took *no* position on this issue prior to *American Ship Building* (A-15, 16). That decision came down after submission of the case to the Court on the first occasion (346 F. 2d 527). Although the Sixth Circuit's decision postdated *American Ship Building*, it was reached without benefit of briefing or argument by any party as respects the impasse issue. After remand by this Court, the Board considered the presence or absence of an impasse for the first time. It reached its decision only after full consideration of all the claims now urged by Petitioner.

case show both a significant economic justification for the lockout, and a lack of conduct significantly prejudicial to union (or employee) interests. Here, Respondent News had bargained for many months with the Union, and the parties were deadlocked on significant issues. Apart from the interest of the News in supporting the Free Press, the News, like the Free Press, was engaged in bargaining at the same time with its contract having expired on the same date, and with the key demands of the Union being pressed upon each employer simultaneously. The Union had suspended negotiations with the News, and Teamster President Hoffa had explicitly threatened a strike against the News, armed at the time with a strike authorization by the Teamsters' membership against both papers. The interest of the News in using economic pressure to implement its own bargaining was thus grounded upon a very real, direct, and immediate bargaining motivation in its own behalf."

Similarly, the Court below, in affirming, said (A-4):

"Obviously, the News' lockout had the effect of supporting the bargaining position of the Free Press. The facts of this case, however, make it clear that the News' utilization of economic pressure was not motivated by a concern for the bargaining position of its competitor, the Free Press, but by its own direct and immediate economic interest in the outcome of the negotiations. The News, as well as the Free Press, had been negotiating with the Teamsters for an extended period of time and was faced with the same bargaining demands by the Union. The Teamsters struck the Free Press over some issues which the News considered vital to it."

Petitioner invites the Court to review a case which does not exist. Whatever interest there may be in the legality of the pre-impasse lockout—this is not such a case. It may be worth future consideration whether a disinterested employer may support another in negotiations with which it is not concerned—but that is not this case. The decision in this case, as the Board and Court below

were careful to point out, is limited to and by its own peculiar facts, involves no extension of what this Court held in *American Ship Building*, and therefore poses no new or important question of Federal law.

CONCLUSION

For the reasons above stated, the petition for a writ of certiorari should be denied.

Respectfully submitted

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Dated: May 13, 1969.

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1267

NEWSPAPER DRIVERS & HANDLERS LOCAL UNION NO. 372, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, PETITIONER

v.

DETROIT NEWSPAPER PUBLISHERS ASSOCIATION, ET AL., AND NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1–8) is reported at 404 F. 2d 1159. The Board's supplemental decision and order (Pet. App. A9–21) are reported at 166 NLRB No. 6. The earlier decisions of the Board (Pet. App. A33–98) and of the court of appeals (Pet. A25–32) are reported at 145 NLRB 996, and 346 F. 2d 527, respectively; the order of this Court vacating the earlier judgment of the court of appeals (Pet. App. A24) is reported at 382 U.S. 374.

350-546—69

JURISDICTION

The judgment of the court of appeals (Pet. App. A22) was entered on December 31, 1968. On March 21, 1969, Mr. Justice Stewart extended the time for filing a petition for a writ of certiorari to April 15, 1969 (Pet. App. A23). The petition was filed on that day. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether substantial evidence supports the Board's findings that the employer locked out its employees principally to advance its own bargaining position, and that the lockout occurred after an impasse had been reached in the bargaining negotiations.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are set out at Pet. App. A99.

STATEMENT

A. THE PRIOR PROCEEDINGS

On January 15, 1964, the Board issued a decision (145 NLRB 996; Pet. App. A33–98) holding that the Evening News Association, publisher of the Detroit News (The News), violated Section 8(a)(1) and (3) of the Act by locking out its employees after petitioner Local 372, which had been engaged in separate bargaining negotiations with both the News and the Detroit Free Press (Free Press), had called a strike against the latter. The Board based its decision on the ground that the lockout could not be considered "de-

fensive" and therefore permissible under *National Labor Relations Board* v. *Truck Drivers Local Union (Buffalo Linen Supply Co.)*, 353 U.S. 87, because the News and the Free Press did not bargain with Local 372 in an established multiemployer bargaining unit (Pet. App. A40). While the case was before the court of appeals, this Court, in *American Ship Building Co.* v. *National Labor Relations Board,* 380 U.S. 300, held that a single employer was entitled to use a lockout to advance its bargaining position, where an impasse in the negotiations had occured. The court of appeals, making its own assessment of the effect of *American Ship,* held that the lockout by the News was privileged thereunder and therefore set aside the Board's decision (346 F. 2d 527; Pet. App. A25–32). On the Union's petition for certiorari, in which the Board joined, this Court vacated that judgment and directed that the case be remanded to the Board so that it could determine, in the first instance, the effect of *American Ship* on this case (382 U.S. 374; Pet. App. A24).

B. THE PRESENT PROCEEDING

1. On the remand, the Board reaffirmed the facts previously found, which may be summarized as follows:

The News, which publishes an afternoon and Sunday edition, and the Free Press, which publishes a morning and Sunday edition, are the only large daily newspapers in Detroit, and the only members of the Detroit Newspaper Publishers Association, which handles their labor relations. For about twenty years, each paper has bargained separately with Local 372

as the representative of the distribution employees. (Pet. App. A10.)

In October 1961, Local 372 gave notice to the Free Press and the News of its desire to revise the respective contracts expiring on November 15, 1961, and separate negotiations commenced. On April 6, 1962, after seventeen bargaining sessions with the Free Press, Local 372 presented a revised proposal and advised that strike action would be recommended to the membership if a satisfactory offer was not received by April 11. On April 11, the Free Press presented its "last best offer," and the membership rejected the offer and voted to strike. On the same afternoon, a picket line was set up and the Free Press suspended publication. (Pet. App. A10–11.)

Between October 27, 1961, and January 11, 1962, Local 372 and the News engaged in thirteen bargaining sessions. There were no sessions from January 11 to March 22, although the News requested meetings, because Local 372 preferred to concentrate on negotiations with the Free Press. On March 22, the parties met again and Local 372 agreed to submit revised contract proposals. These proposals were received by the News on April 12, the day after Local 372 struck the Free Press. (Pet. App. A11.)[1]

[1] On April 9 and 10, officials of the News and the Free Press had met to discuss their common problems with respect to Local 372. The News concluded that 10 of the 18 issues remaining between Local 372 and the Free Press were also of interest to the News in its negotiations, and that 3 of the 10 were vital in its bargaining. (Pet. App. A11.) These issues were (1) negotiations in advance of any changes in the operation of the circu-

On the next day, April 13, Teamsters International President James Hoffa telephoned Association executive secretary Robert Butz to arrange a meeting concerning the Free Press contract. He also told Butz that "the News had better be present or on a standby basis at the meeting because the issues at the News would have to be settled or they'd be on strike also." President Hoffa and local Teamsters officials met with the Free Press on the afternoon of April 13 and the morning of April 14, and with the News on the afternoon of April 14. The meeting with the News was based on the proposals received by the News on April 12, which contained the identical demands made on the Free Press as to the three issues the News considered vital. (Pet. App. A12.) At the close of the meeting, the following dialogue occurred between Hoffa and Dorris, the News' negotiator (Pet. App. A12–13):

> He [Hoffa] said he wanted to inform us of a statement he had just given to the press, and radio. He said that he had informed them that they were going to call a union meeting and present to this meeting the company's last proposal. I corrected him that this was not the

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lation department; (2) a definition of "work-week" for certain employees; and (3) weekly wage increases greater than those granted to other unions (R. 50a; 1139a–1140a). The News urged the Free Press to maintain its position on them under all circumstances. The News agreed that, if Local 372 struck the Free Press over its refusal to accede to any of the 3 demands, the "News would support the Free Press and would not publish." The two publishers further agreed that "the Union should not be informed that a strike against one is a strike against both or what the position of the News would be in case of a strike at the Free Press." (Pet. App. A11–12.)

> company's last proposal but it had been submitted December 22nd and was still considered the best offer at that time, we were still willing to continue negotiations. He replied in effect regardless of whether it is the best proposal—he paraphrased it—then this is your final best offer and it is going to be submitted to the union.

When Local 372 struck the Free Press on April 11, the News ceased publication for three days, although all of its employees reported for work and were paid for those days. On Sunday, April 15, the News published a "double masthead" edition, called "The Detroit News - The Detroit Free Press, A Temporary Combined Edition." When work on the "double masthead" edition was completed, the News notified its employees that they should not report for work until further notice, because "there was no work available." (Pet. App. A12.)

No further meetings were held until negotiations were resumed at a meeting on April 18 at the offices of the Detroit Police Commissioner. By the end of that meeting, which lasted 33 hours, the Teamsters and the Free Press had reached agreement on a new contract. The Teamsters and the News resolved some of their outstanding issues and agreed that all unresolved issues would be submitted to arbitration. On April 19, the Teamsters ended its strike at the Free Press, and the News ended its lockout. (Pet. App. A13–14.).

2. Reviewing the facts, in the light of *American Ship, supra,* the Board found that "both [Local 372 and the News] viewed their negotiations as being deadlocked on key issues, and neither doubted that a

work stoppage would be required to break the deadlock" (Pet. App. A16).[2] The Board further found that, although the News had an interest in supporting the Free Press, the News' "lockout was preponderantly designed to force the Union to accept the Company's bargaining proposals" (Pet. App. A16). Accordingly, the Board concluded that the News did not violate the Act by locking out its employees from April 16–19, 1962 (Pet. App. A14, 18).

3. The court of appeals sustained the Board's findings. The court noted that "over identical issues, [Local 372] had struck the Free Press and threatened the News with a strike unless it acceded to the union's demands. The parties were unable to resolve their disputes and had to call upon an experienced mediator for assistance. This is the clearest kind of evidence of an impasse." (Pet. App. A3.) The court added that, although "The News' lockout had the effect of supporting the bargaining position of the Free Press," the facts "make it clear that the News' utilization of economic pressure was not motivated by a concern for the bargaining position of its competitor, the Free Press, but by its own direct and immediate economic interest in the outcome of the negotiations" (Pet. App. A4).

ARGUMENT

The questions posed in the petition (Pet. 3)—whether an employer may lock out its employees prior to an impasse in bargaining and for the purpose of bringing pressure on the striking employees of an-

[2] Member Brown dissented, finding that no impasse had occurred (Pet. App. A19–20).

other employer in a separate bargaining unit—are not presented on this record. For the Board and the court below found that there was an impasse in the negotiations between Local 372 and the News, and that the News' principal reason for locking out its employees was to support its own bargaining position. Since on these findings the lockout was clearly privileged under *American Ship, supra,*[3] the only question really presented is whether the findings are based on substantial evidence—an issue which does not warrant review by this Court. Moreover, as shown in the Statement, *supra,* the record provides ample support for the Board's findings.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1969.

[3] The Board has held that the rationale of *American Ship* would, in some circumstances, authorize a lockout even before an impasse. *Darling and Co.*, 171 NLRB No. 95. There is no occasion here to determine the correctness of this view.

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